

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz.R.Sup.Ct. 111(c); ARCAP 28(c);
Ariz.R.Crim.P. 31.24



DIVISION ONE
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BY: DN

**IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE**

STATE OF ARIZONA,) 1 CA-CR 08-1019
)
Appellee,) DEPARTMENT C
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
RICARDO MORENO VALENCIA,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2008-005767-001 DT

The Honorable Steven K. Holding, Judge Pro Tem

AFFIRMED

Terry Goddard, Attorney General Phoenix
by Kent E. Cattani, Chief Counsel
Criminal Appeals/Capital Litigation Section
Attorneys for Appellee

Maricopa County Public Defender Phoenix
by Eleanor S. Terpstra, Deputy Public Defender
Attorneys for Appellant

Ricardo Moreno Valencia Florence
Appellant

I R V I N E, Presiding Judge

¶1 This appeal is filed in accordance with *Anders v. California*, 386 U.S. 738 (1967) and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969). Counsel for Ricardo Moreno Valencia ("Valencia") asks this court to search the record for fundamental error. Valencia was given an opportunity to file a supplemental brief in propria persona. Valencia has done so. After reviewing the record, we affirm Valencia's convictions and sentences for forgery.

FACTS AND PROCEDURAL HISTORY

¶2 The State charged Valencia with four counts of forgery, class four felonies. At the close of the evidence, the trial court properly instructed the jury on the elements of the offense. Valencia was convicted as charged.

¶3 The trial court conducted the sentencing hearing in compliance with Valencia's constitutional rights and Rule 26 of the Arizona Rules of Criminal Procedure. The trial court sentenced Valencia to three years' imprisonment in ADOC for each count with credit for 249 days presentence incarceration. The court ordered the sentences to run concurrently.

DISCUSSION

¶4 We exercise jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution and Arizona Revised Statutes ("A.R.S.") section 12-120.21(A)(1) (2003). We review

Valencia's convictions and sentences for fundamental error. See *State v. Gendron*, 168 Ariz. 153, 155, 812 P.2d 626, 628 (1991).

¶15 Through counsel and in his own brief, Valencia argues that: "he only committed one crime arising from a single act or event and should have been sentenced for only one class 4 felony;" the court should not have sentenced him under a repetitive sentencing scheme; and he should have received additional presentence incarceration credit, beginning from the time he was booked on a separate offense. We disagree.

¶16 Pursuant to A.R.S. § 13-2002(A)(3) (2010),¹ forgery requires proof of presentment of a document containing false information with intent to defraud. Here, Valencia presented four different documents (driver's license, certificate of title, application for title and registration, and vehicle registration) bearing a different name than his own. At sentencing, the court found that Valencia had one historical prior felony and sentenced him to a mitigated term of three years' imprisonment for each count. Because a defendant is entitled to presentence incarceration credit only for time spent in custody pursuant to the offense for which he is charged, *State v. Gourdin*, 156 Ariz. 337, 339, 751 P.2d 997, 999 (App.

¹ We cite the current version of the applicable statute because no revisions material to this decision have since occurred.

1988), the court properly credited Valencia for presentence incarceration credit.

¶7 We also note that the record provides no evidence that a voluntariness hearing was held. Nevertheless, defense counsel made no objection on the basis of voluntariness to the introduction of any of Valencia's prior statements. In fact, no claim or suggestion was presented, either by the evidence or by counsel, that Valencia's prior statements were involuntary. Consequently, we find that no separate voluntariness hearing was required. See *State v. Peats*, 106 Ariz. 254, 257, 475 P.2d 238, 241 (1970).

¶8 Counsel for Valencia has advised this court that after a diligent search of the entire record, she has found no arguable question of law. The court has read and considered counsel's brief and fully reviewed the record for reversible error. See *Leon*, 104 Ariz. at 300, 451 P.2d at 881. We find none. All of the proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure. So far as the record reveals, Valencia was represented by counsel at all stages of the proceedings and the sentence imposed was within the statutory limits. We decline to order briefing and we affirm Valencia's convictions and sentences.

¶9 Upon the filing of this decision, defense counsel shall inform Valencia of the status of his appeal and of his

future options. Defense counsel has no further obligations unless, upon review, counsel finds an issue appropriate for submission to the Arizona Supreme Court by petition for review. See *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984). Valencia shall have thirty days from the date of this decision to proceed, if he desires, with a pro per motion for reconsideration or petition for review. On the court's own motion, we extend the time for Valencia to file a pro per motion for reconsideration to thirty days from the date of this decision.

CONCLUSION

¶10 We affirm Valencia's convictions and sentences.

/s/

PATRICK IRVINE, Presiding Judge

CONCURRING:

/s/

MICHAEL J. BROWN, Judge

/s/

DONN KESSLER, Judge