

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



DIVISION ONE
FILED: 08/31/2010
RUTH WILLINGHAM,
ACTING CLERK
BY: GH

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) No. 1 CA-CR 09-0021
)
Appellee,) DEPARTMENT D
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
TAMIKO JERMAINE MOORE,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2005-112001-001 DT

The Honorable Kristin Hoffman, Judge
The Honorable F. Pendleton Gaines, Judge

AFFIRMED

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

Pamela J. Eaton, Attorney at Law Phoenix
By Pamela J. Eaton
Attorney for Appellant

B R O W N, Judge

¶1 Tamiko Jermaine Moore ("Moore") appeals his conviction and sentence for resisting arrest. Counsel for Moore filed a brief in accordance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), advising that after searching the record on appeal, she was unable to find any arguable grounds for reversal. Moore was granted the opportunity to file a supplemental brief *in propria persona*, but he has not done so.

¶2 Our obligation is to review the entire record for reversible error. *State v. Clark*, 196 Ariz. 530, 537, ¶ 30, 2 P.3d 89, 96 (App. 1999). We view the facts in the light most favorable to sustaining the conviction and resolve all reasonable inferences against Moore. *State v. Guerra*, 161 Ariz. 289, 293, 778 P.2d 1185, 1189 (1989). Finding no reversible error, we affirm.

¶3 In August, 2005, Moore was indicted for resisting arrest, a Class 6 felony, in violation of Arizona Revised Statutes ("A.R.S.") section 13-2508 (2010).¹ The following evidence was presented at trial.

¶4 Moore was in the emergency room of Phoenix Baptist Hospital waiting to be treated for a laceration on his forehead. One of the emergency room nurses notified the Phoenix Police

¹ Moore was also indicted on two other charges that were dismissed prior to trial and are not the subject of this appeal.

Department that Moore matched the description of a person described in a "bulletin" at the hospital.

¶15 Two police officers arrived at the hospital and approached Moore. Officer M.K. testified that after informing Moore he was under arrest, he left the bedside to make a phone call, leaving Sergeant P.K. to wait with Moore. Sergeant P.K. testified he told Moore he was under arrest, but due to Moore's injuries he would not be immediately placed in handcuffs if he would cooperate. Shortly thereafter, Moore jumped out of the hospital bed and fled.

¶16 Both officers pursued Moore, who was restricted to the emergency area of the hospital. They confined Moore behind a nurses' station, where a struggle ensued. Moore ignored commands to stop resisting arrest, flailed his arms and legs, and pushed Officer M.K. numerous times in an attempt to get away and avoid having handcuffs placed on him. During the struggle, and as a result of Moore pushing Sergeant P.K.'s hands away, Sergeant P.K. fell backward and hit his head but did not sustain any injuries. The officers eventually placed Moore in handcuffs.

¶17 A jury found Moore guilty of resisting arrest. At a separate hearing before the sentencing judge, Moore admitted to having two prior felony offenses. He was sentenced to the presumptive term of three and three-quarters years in prison,

and was given 287² days of presentence incarceration credit. Moore timely appealed.³

¶18 We have read and considered counsel's brief and have reviewed the entire 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 accordance with the Arizona Rules of Criminal Procedure. The record shows that Moore was present and represented by counsel at all pertinent stages of the proceedings, he was afforded the opportunity to speak before sentencing, and the sentence imposed was within statutory limits. Accordingly, we affirm Moore's conviction and sentence.

¶19 Upon the filing of this decision, counsel shall inform Moore of the status of the appeal and his options. Defense counsel has no further obligations, unless, upon review, counsel finds an issue appropriate for submission to the Arizona

² On this record, it appears that the trial court erred in calculating Moore's presentence incarceration credit. At most, Moore should have received credit for 270 days, rather than 287 days. The State did not challenge the calculation by filing a cross-appeal and thus we cannot correct it. See *State v. Dawson*, 164 Ariz. 278, 286, 792 P.2d 741, 749 (1990) (recognizing that absent a timely cross-appeal, appellate courts cannot correct an illegally lenient sentence that favors an appellant).

³ Moore's notice of appeal indicates he is appealing from a judgment and sentence imposed on January 5, 2009; however, the record shows that sentencing occurred on December 19, 2008. Nonetheless, Moore filed his notice of appeal within the twenty-day time limit provided under Arizona Rule of Criminal Procedure 31.3.

Supreme Court by petition for review. See *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984). Moore has thirty days from the date of this decision to proceed, if he desires, with a *pro per* motion for reconsideration or petition for review.

/s/

MICHAEL J. BROWN, Presiding Judge

CONCURRING:

/s/

JON W. THOMPSON, Judge

/s/

SHELDON H. WEISBERG, Judge