

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
FILED: 01/21/2010
PHILIP G. URRY, CLERK
BY: GH

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

STATE OF ARIZONA,) 1 CA-CR 09-0220
)
Appellee,) DEPARTMENT D
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
EDGAR NAVARRO NOGALES,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2008-159301-001 DT

The Honorable Christopher T. Whitten, Judge

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 Peg Green, Deputy Public Defender
Attorneys for Appellant

I R V I N E, 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 Edgar Nogales asks this court to search the record for fundamental error. Nogales was given an opportunity to file a supplemental brief in propria persona. Nogales has not done so. After reviewing the record, we affirm Nogales' convictions and sentences for unlawful discharge of a firearm and false reporting to law enforcement.

FACTS¹ AND PROCEDURAL HISTORY

¶2 The State charged Nogales with count one, unlawful discharge of a firearm, a class six felony, and count two, false reporting to a law enforcement agency, a class one misdemeanor. At the close of the evidence, the trial court properly instructed the jury on the elements of the offense. Nogales was convicted of both charges.

¶3 In the early morning hours of September 20, 2008, several people who lived at an apartment complex in Glendale, Arizona, heard gunshots. Residents heard a second set of gunshots approximately thirty minutes later. The shots were so close that several residents "hit the ground" in fear for their safety. The police were called and two officers arrived to the complex. They spoke with M.H., D.S., and the others standing

¹ "We view the evidence in the light most favorable to sustaining the verdicts and resolve all inferences against [Defendant]." *State v. Nihiser*, 191 Ariz. 199, 201, 953 P.2d 1252, 1254 (App. 1997) (citation omitted).

around, who told them it sounded like the shots came from Nogales's apartment. The officers spoke with Nogales and left. The residents returned to their respective apartments.

¶4 Several minutes later they heard a third set of gunshots. M.H. and D.S. observed that Nogales would go inside his apartment, a few minutes later they would hear gunshots, and then he would return to sit outside on the porch. They heard about five to six gunshots each time.

¶5 Officers Z.H. and N.M. arrived after the third set of gunshots. M.H. and D.S. told Officer N.M. that the gunshots came from Nogales's apartment. The officers knocked on the door. They heard loud music coming from the apartment. Nogales answered the door and appeared to be intoxicated. They checked him for weapons and determined he was unarmed. Officer Z.H. asked if he could go inside to turn down the music and Nogales gave him permission to do so.

¶6 While turning down the music, Officer Z.H. noticed a handgun sitting on top of the stereo. He mouthed "gun" to Officer N.M. who asked Nogales if there were weapons inside the apartment. Nogales responded "[n]o." Officer Z.H. leaned over to smell the gun and "smelled the smell commonly associated with burnt gunpowder." The gun was loaded. They arrested Nogales.

¶7 Nogales told them his name was Edward Nogales and his birth date was 10-29-85. He told Officer N.M. that he did not

have any middle or other names. They found no record for him based on this information.

¶18 At trial, Nogales testified that he had 20-24 beers to drink that evening. He told the jury that he did not shoot the weapon but pulled it out for protection after he heard the gunshots. He also testified that his birth date is 10-29-85. The jury found Nogales guilty of both charges.

¶19 The trial court conducted the sentencing hearing in compliance with Nogales' constitutional rights and Rule 26 of the Arizona Rules of Criminal Procedure. The trial court sentenced Nogales to 1.5 years with credit for 181 days presentence incarceration for count one and to time served for count two.

DISCUSSION

¶10 We exercise jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1) (2003) and 13-4033(A)(1) (Supp. 2009). We review Nogales' convictions and sentences for fundamental error. *See State v. Gendron*, 168 Ariz. 153, 155, 812 P.2d 626, 628 (1991).

¶11 Counsel for Nogales has advised this court that after a diligent search of the entire record, she has found no arguable question of law. Counsel advises that "Nogales would like the court to address the minimal evidence presented against him by the state, the fact that the police officer lied on the

stand about what Nogales said about his age, and his trial attorney's lack of communication with him prior to trial."² 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. Although Nogales's actual birth date is unclear from the record,³ he falsely reported his first name was Edward instead of Edgar. All of the proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure. So far as the record reveals, Nogales 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 Nogales' convictions and sentences.

¶12 Upon the filing of this decision, defense counsel shall inform Nogales 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). Nogales shall have thirty days from the date of this

² A defendant may only bring ineffective assistance of counsel claims in Rule 32 post-conviction proceedings. *State v. Spreitz*, 202 Ariz. 1, 3, ¶ 9, 39 P.3d 525, 527 (2002).

³ Officer N.M. testified that the one-touch verification of Nogales' fingerprints showed a birth date of 10-29-84 but other parts of the record indicate Nogales's birth date is 10-29-85.

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 Nogales to file a pro per motion for reconsideration to thirty days from the date of this decision.

CONCLUSION

¶13 We affirm.

/s/

PATRICK IRVINE, Judge

CONCURRING:

/s/

JOHN C. GEMMILL, Presiding Judge

/s/

JON W. THOMPSON, Judge