

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

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



DIVISION ONE
FILED: 02/18/2010
PHILIP G. URRY, CLERK
BY: GH

STATE OF ARIZONA,) 1 CA-CR 09-0227
)
Appellee,) DEPARTMENT C
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
FRANCISCO ANGEL CASA-CABRERA,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2006-163331-001 DT

The Honorable F. Pendleton Gaines, III, Judge

AFFIRMED

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

James J. Haas, Maricopa County Public Defender Phoenix
By Kathryn Petroff, Deputy Public Defender
Attorneys for Appellant

W I N T H R O P, Judge

¶1 Francisco Angel Casa-Cabrera ("Appellant") appeals from his conviction and sentence for misconduct involving weapons. Appellant's counsel filed a brief in accordance with

Smith v. Robbins, 528 U.S. 259 (2000); *Anders v. California*, 386 U.S. 738 (1967); and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), stating that she has searched the record on appeal and found no arguable question of law that is not frivolous. Appellant's counsel therefore requests that we review the record for fundamental error. See *State v. Clark*, 196 Ariz. 530, 537, ¶ 30, 2 P.3d 89, 96 (App. 1999) (stating that this court reviews the entire record for reversible error). Although this court granted Appellant the opportunity to file a supplemental brief *in propria persona*, he has not done so.

¶2 We have appellate jurisdiction pursuant to the Arizona Constitution, Article 6, Section 9, and Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1) (2003), 13-4031 (2001), and 13-4033(A) (Supp. 2009). Finding no reversible error, we affirm.

I. FACTS AND PROCEDURAL HISTORY

¶3 We review the facts in the light most favorable to sustaining the trial court's judgment and resolve all reasonable inferences against Appellant. See *State v. Kiper*, 181 Ariz. 62, 64, 887 P.2d 592, 594 (App. 1994).

¶4 On October 13, 2006, a grand jury issued an indictment, charging Appellant with one count of misconduct involving weapons for knowingly possessing a deadly weapon while being a prohibited possessor. See A.R.S. § 13-3102(A)(4) (Supp.

2009).¹ The State later alleged that Appellant had one prior felony conviction and had committed the charged crime while on probation.

¶5 Appellant was tried *in absentia*. At trial, a Phoenix police officer testified that, on October 5, 2006, he and another officer knocked on the door of a house in search of Appellant. Appellant's sister answered the door and gave the officers permission to enter. The officers encountered Appellant as he was emerging from his bedroom, placed him into custody, and asked him if he had any weapons. Appellant admitted that he had a revolver in the bedroom, and he pointed toward the pillow on the bed. The officers found a loaded revolver under the pillow, arrested Appellant, and informed him of his rights pursuant to *Miranda*.² Appellant informed the officers that he obtained the gun from his cousin for protection because his sister's home had been recently burglarized.

¶6 Appellant's probation officer testified at trial that Appellant had been placed on felony probation on June 20, 2006, and was still on probation at the time of the trial.

¶7 On April 3, 2007, the jury convicted Appellant as charged. On March 13, 2009, after determining that Appellant

¹ We cite the current version of the statute because no changes material to our decision have since occurred.

² See *Miranda v. Arizona*, 384 U.S. 436 (1966).

had one prior felony conviction, the trial court sentenced Appellant to the presumptive term of 4.5 years' incarceration in Arizona Department of Corrections. The court also at Appellant's request revoked his probation for the prior felony offense, ordered that his sentence in this case be served concurrently with the sentence imposed for his prior conviction,³ and credited him for 129 days of pre-sentence incarceration.⁴ Appellant filed a timely notice of appeal.

II. ANALYSIS

¶8 We have reviewed the entire record for reversible error and find none. See *Leon*, 104 Ariz. at 300, 451 P.2d at 881; *Clark*, 196 Ariz. at 537, ¶ 30, 2 P.3d at 96. The evidence presented at the trial was substantial and supports the verdict, and Appellant's sentence was within the statutory limits. Appellant was represented by counsel at all stages of the proceedings and was given the opportunity to speak at

³ The State does not challenge the court's imposition of concurrent sentences; therefore, we do not address their propriety. See generally A.R.S. § 13-708(C) (Supp. 2009) (requiring consecutive sentences); *State v. Dawson*, 164 Ariz. 278, 286, 792 P.2d 741, 749 (1990) (stating that absent a timely cross-appeal, this court cannot correct an illegally lenient sentence that favors an appellant).

⁴ From our review of the record, it appears that the trial court erred in calculating Appellant's pre-sentence incarceration credit in this matter. Appellant should have received credit for only 128 days, rather than 129 days. Again relying on *Dawson*, 164 Ariz. at 286, 792 P.2d at 749, we do not correct this error.

sentencing. The proceedings were conducted in compliance with his constitutional and statutory rights and the Arizona Rules of Criminal Procedure.

¶9 After filing of this decision, defense counsel's obligations pertaining to Appellant's representation in this appeal have ended. Counsel need do no more than inform Appellant of the status of the appeal and of his future options, unless counsel's review reveals an issue appropriate for petition for review to the Arizona Supreme Court. See *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984). Appellant 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.

III. CONCLUSION

¶10 We affirm Appellant's conviction and sentence.

_____/S/_____
LAWRENCE F. WINTHROP, Judge

CONCURRING:

_____/S/_____
PETER B. SWANN, Presiding Judge

_____/S/_____
MICHAEL J. BROWN, Judge