DIVISION ONE
FILED: 04/29/10
PHILIP G. URRY, CLERK
BY: JT

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,	)	1 CA-CR 09-0265
	)	
Appellee,	)	DEPARTMENT D
	)	
v.	)	**MEMORANDUM DECISION**
	)	(Not for Publication -
RICARDO ALBERTO GARCIA-MEDINA,	)	Rule 111, Rules of the
	)	Arizona Supreme Court)
Appellant.	)	
	)	
_____	)	

Appeal from the Superior Court in Maricopa County

Cause No. CR2006-178629-001 DT

The Honorable Steven P. Lynch, 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 L. Petroff, Deputy Public Defender
Attorneys for Appellant

O R O Z C O, Judge

¶1 Ricardo Alberto Garcia-Medina (Defendant) appeals from his convictions on one count of possession of dangerous drugs for sale, a class two felony; one count of misconduct involving

weapons, a class four felony; and one count of forgery, a class four felony. Defendant's counsel 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 this Court that after a search of the entire appellate record, she found no arguable question of law that was not frivolous. Defendant was afforded the opportunity to file a supplemental brief *in propria persona*, but he did not do so. Our obligation in this appeal 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 have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution, and Arizona Revised Statutes (A.R.S.) sections 12-120.21.A.1 (2003), 13-4031, and -4033.A.1 (2010). Finding no reversible error, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 On December 22, 2006, Phoenix police officers executed a search warrant at Defendant's residence. As a result, they confiscated over fifty grams of methamphetamine, two digital scales, and a nine millimeter handgun. Officers also found one half of a Mexican driver's license inside Defendant's wallet with Defendant's picture on it and the name Jose. Defendant told officers that he lived alone in the apartment, that he owned the gun, and that the driver's license was fake and had been used by him it to try to find work.

¶3 On January 2, 2006, Defendant was indicted on the counts listed in paragraph one. On March 15, 2007, Defendant was released on bond. He appeared at his status conference hearing on March 15, 2007, but failed to appear at his next court date on May 1, 2007. Consequently, the trial court vacated all of Defendant's pending court dates and ordered a bench warrant be issued for Defendant's arrest, but the warrant was never issued. On May 1, 2008, the Criminal Court Administration advised the trial court the bench warrant was never issued, as ordered. The trial court then issued a bench warrant for Defendant's arrest.

¶4 On July 23, 2008, Defendant filed a motion to dismiss pursuant to Rule 8 of the Arizona Rules of Criminal Procedure.[1] Defendant argued he was denied his right to a speedy trial because the State failed to bring him to trial within the 180-day limit set forth in Rule 8.2.a(2). The trial court denied Defendant's motion, concluding: (1) "the failure to issue the bench warrant was not made intentionally or with bad faith;" (2) the error was a clerical error that the prosecution had no part in; and (3) "[a]lthough this error technically violated the time limits set in Rule 8.2, it did not rise to the level of a constitutional violation under the United States Constitution."

[1] Unless otherwise specified, hereafter, an Arizona Rule of Criminal Procedure is referred to as "Rule __."

¶5 A jury of eight with one alternate was empanelled on January 28, 2009. At the conclusion of trial, the jury deliberated but was unable to reach a unanimous verdict. A mistrial was declared and the trial court ordered a new trial (the second trial). On February 18, 2009, a new jury of eight with two alternates was empanelled for the second trial. After a five-day trial, the jury found Defendant guilty on all counts.[2] On April 1, 2009, the trial court sentenced Defendant to a term of 9 years in prison as to Count 1, and 2.5 years in prison as to both Counts 2 and 3. All three sentences were to be served concurrently. Defendant received 362 days of pre-sentence incarceration credit.[3] Defendant subsequently filed a timely notice of appeal on April 17, 2009.

DISCUSSION

[2] The verdict form for count one in the second trial is not in the record, but the trial transcript and minute entry indicate that the form for count one was read aloud in open court and signed by the foreperson.

[3] The record is unclear as to how the trial court arrived at 362 days of pre-sentence incarceration credit. However, neither Defendant nor the State raised this issue on appeal. Accordingly, we will not disturb the trial court's ruling regarding pre-sentence incarceration credit. *See State v. Scott*, 187 Ariz. 474, 476, 930 P.2d 551, 553 (App. 1996) (stating that if a trial record is incomplete, we must assume the missing portions of the record support the trial court's ruling); *see also State v. Dawson*, 164 Ariz. 278, 281-82, 792 P.2d 741, 744-45 (1990) (refusing to correct an alleged sentencing error in the absence of a cross appeal).

¶6 When reviewing the record, "we view the evidence in the light most favorable to supporting the verdict." *State v. Torres-Soto*, 187 Ariz. 144, 145, 927 P.2d 804, 805 (App. 1996). We have read and considered counsel's brief and carefully searched the entire record for reversible error and found none. *Clark*, 196 Ariz. at 541, ¶ 49, 2 P.3d at 100. All of the proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure and substantial evidence supported the jury's finding of guilt. We have reviewed Defendant's motion to dismiss, and we affirm the trial court's ruling that Defendant's right to a speedy trial was not violated. *See* Ariz. R. Crim. P. 8.4.a; *State v. Bowman*, 105 Ariz. 307, 310, 464 P.2d 330, 333 (1970) (holding that a defendant who deliberately stalls the proceeding cannot thereafter claim his right to a speedy trial). Defendant was present and represented by counsel at all critical stages of the proceedings. At sentencing, Defendant and his counsel were given an opportunity to speak and the court imposed a legal sentence.

¶7 Counsel's obligations pertaining to Defendant's representation in this appeal have ended. Counsel need do nothing more than inform Defendant of the status of the appeal and his future options, unless counsel's review reveals an issue appropriate for submission to the Arizona Supreme Court by petition for review. *State v. Shattuck*, 140 Ariz. 582, 584-85,

684 P.2d 154, 156-57 (1984). Defendant shall have thirty days from the date of this decision to proceed, if he so desires, with an *in propria persona* motion for reconsideration or petition for review.[4]

CONCLUSION

¶8 For the foregoing reasons, Defendant's convictions and sentences are affirmed.

/S/
_____
PATRICIA A. OROZCO, Presiding Judge

CONCURRING:

/S/
_____
DIANE M. JOHNSEN, Judge

/S/
_____
JON W. THOMPSON, Judge

[4] Pursuant to Rule 31.18.b, Defendant or his counsel has fifteen days to file a motion for reconsideration. On the Court's own motion, we extend the time to file such a motion to thirty days from the date of this decision.