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

STATE OF ARIZONA, Appellee,	)	1 CA-CR 09-0523
	)	DEPARTMENT D
v.	)	**MEMORANDUM DECISION**
	)	(Not for Publication -
BRUCE CARLTON HAMILTON,	)	Rule 111, Rules of the
	)	Arizona Supreme Court
Appellant.	)	

Appeal from the Superior Court in Maricopa County

Cause No. CR2008-177534-001 DT

The Honorable Susan M. Brnovich, Judge

AFFIRMED AS MODIFIED

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 Bruce Carlton Hamilton (Defendant) appeals his convictions and sentences for discharge of a firearm at a

residential structure, a class two felony, and two counts of aggravated assault, class three felonies.

¶2 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.

¶3 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).[1] For reasons that follow, we affirm Defendant's convictions and sentences and modify Defendant's sentences to reflect the correct amount of presentence-incarceration credit as to all three counts. We also modify the sentencing minute entry to reflect 202 days of presentence-incarceration credit on each of the three counts.

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

FACTS AND PROCEDURAL HISTORY

¶4 Defendant was charged with discharge of a firearm at a residential structure, a class two felony, and two counts of aggravated assault, class three felonies. The evidence at trial established the following facts, which we view, along with all reasonable inferences therefrom, in the light most favorable to upholding the verdict. *State v. Powers*, 200 Ariz. 123, 124, ¶ 2, 23 P.3d 668, 669 (App. 2001).

¶5 C.L. and Defendant were in a romantic relationship for approximately six-and-one-half months prior to the incident. C.L. testified that she and Defendant had an argument on December 11, 2008, and he left the home they shared. C.L. indicated that the next day, on December 12, she took food to a neighbor, and Defendant was at the neighbor's house. C.L. said she asked Defendant for $40 she believed he owed her for putting gas in his car. Defendant got hostile, left the neighbor's house, and C.L. followed him out to his car to ask for the money again. Defendant got into his car and C.L. began arguing with him through the window. C.L. testified that Defendant pulled a gun out of his glove box, exited the car, pushed her to the ground, fired a shot by her ear and held the gun at her throat. C.L. indicated that Defendant "just continued to shoot everywhere." She also stated she remembered at least three

additional shots being fired after the first shot by her ear, and said she "was scared" when Defendant was shooting.

¶6 Officers R. and S. received a call to respond to the incident between C.L. and Defendant. Officer R. testified that as he was approaching the scene, he saw a male pushing a female against a vehicle. When Officer R. arrived on the scene, he observed Defendant had a handgun aimed towards C.L.'s head. Officer R. ordered Defendant to put the gun down and Defendant complied. Officer R. took Defendant's gun and identified the same gun at trial as the gun he had secured the day of the incident, a .40 caliber handgun. Officer R. also testified that he located six shell casings at the scene, which he identified as .40 caliber "spent shell casings." Officer S. testified that there was a bullet strike found in a palm tree that was "very similar to a .40 caliber" mark.

¶7 Officer M., who arrived on the scene after Officers R. and S., testified that there was a "fresh" bullet hole in a palm tree. Officer M. testified that, based on his training and experience as a police officer, the bullet hole looked "fresh" because there were "fresh splinters in the palm tree." Officer M. also stated that there were "two structures that appeared to be . . . in line with the direction that the bullet seemed to have entered the tree." Officer M. confirmed that one of the two structures was occupied, while the other was a vacant house.

Officer M. further explained that based on the way the bullet struck the palm tree, it appeared that the bullet was "right in line with" the occupied structure, and that it would have missed the vacant structure.

¶8 Defendant testified that C.L. had asked him for money, and he attempted to avoid the situation by walking to his car. Because C.L. persisted, Defendant said he got his gun out of his glove box, exited his car and fired a shot into the ground. C.L. started backing up, tripped over the cement and "fell back." Defendant testified that every time C.L. said something "vulgar" to him, he fired a shot into the ground.

¶9 The jury found Defendant guilty as charged and found all three offenses to be dangerous. The trial court sentenced Defendant to a presumptive term of ten-and-one-half years imprisonment for discharge of a firearm at a residential structure, and a presumptive term of seven-and-one-half years imprisonment for each count of aggravated assault. All of the sentences were ordered to run concurrently. Defendant was given 202 days of presentence-incarceration credit as to the discharge of a firearm at a residential structure, but he was not given any presentence-incarceration credit for either aggravated assault conviction. Defendant timely appealed.

Sufficiency of the evidence

¶10 "The finder-of-fact, not the appellate court, weighs the evidence and determines the credibility of witnesses." *State v. Cid*, 181 Ariz. 496, 500, 892 P.2d 216, 220 (App. 1995). We will not disturb the fact finder's "decision if there is substantial evidence to support its verdict." *Id.*

¶11 Pursuant to A.R.S § 13-1211 (2010), a person commits discharge of a firearm at a residential structure if the person "knowingly discharges a firearm at a residential structure." As defined, a "residential structure" is "a movable or immovable or permanent or temporary structure that is adapted for both human residence or lodging." A.R.S. § 13-1211.C.2. Pursuant to A.R.S. § 13-1211.C.3, a "structure" is, in part, "any building . . . that is being used for lodging, business or transportation."

¶12 Defendant testified that he had fired his gun six times. Additionally, there was testimony from Officer M. that the bullet hole in the palm tree was right in line with two structures; one of them was an occupied home and the other was vacant. Specifically, Officer M. testified that the bullet hole in the palm tree was "right in line with" the occupied structure, and the bullet would have missed the vacant structure.

¶13 "A person commits aggravated assault if the person commits assault as prescribed by § 13-1203" (2010) and "the

person uses a deadly weapon or dangerous instrument." A.R.S. § 13-1204.A.2 (2010). A "deadly weapon" includes a firearm. A.R.S. § 13-105.15 (2010). Pursuant to A.R.S. § 13-1203.A.2, "[a] person commits assault by . . . [i]ntentionally placing another person in reasonable apprehension of imminent physical injury."

¶14 Defendant was charged with two counts of aggravated assault: one count for firing the gun next to C.L.'s head and one count for holding the gun to C.L.'s neck. C.L. testified that after Defendant pushed her to the ground, he fired a shot by her ear and then held the gun at her throat. C.L. further testified that Defendant "pretty much wanted to scare me because one of those bullets actually could have hit me." C.L. also testified that she was "scared to move because [she was] thinking the next bullet is going to be in [her]." Officer R. testified that when he arrived on the scene, he observed Defendant had a handgun aimed at C.L.'s head.

¶15 We find substantial evidence supports the jury's verdict as to all charges in this case. *Cid*, 181 Ariz. at 500, 892 P.2d at 220.

Sentencing order correction

¶16 At sentencing, the court awarded Defendant 202 days of presentence-incarceration credit for the count of discharge of a firearm at a residential structure. The sentencing minute

entry, however, reflects that Defendant's presentence-incarceration credit was not applied to either conviction of aggravated assault.

¶17 When a defendant is sentenced to concurrent terms of imprisonment, he is entitled to presentence-incarceration credit as to each concurrent sentence. *See State v. Cruz-Mata*, 138 Ariz. 370, 375-76, 674 P.2d 1368, 1373-74 (1983). The failure to award full presentence-incarceration credit is fundamental error that must be corrected. *State v. Cofield*, 210 Ariz. 84, 86, ¶ 10, 107 P.3d 930, 932 (App. 2005). We have the authority to modify a sentence to reflect the correct amount of presentence-incarceration credit. *See* A.R.S. § 13-4037 (2010); *see also State v. Stevens*, 173 Ariz. 494, 496, 844 P.2d 661, 663 (App. 1992). We therefore modify the sentence to grant Defendant 202 days of presentence-incarceration credit for each of the three counts and correct the sentencing minute entry to reflect this modification.

CONCLUSION

¶18 We have read and considered counsel's brief, 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. Defendant was present and represented by counsel at all critical stages of the proceedings.

¶19 The record reflects that Defendant received a fair trial. The court held the appropriate pretrial hearings. The State presented evidence sufficient to allow the jury to convict Defendant of all three charges. The jury was properly comprised of twelve jurors. The court properly instructed the jury on the elements of the charge, the State's burden of proof beyond a reasonable doubt and the necessity of a unanimous verdict. The jury returned a unanimous verdict, which was confirmed by jury polling. The court received and considered a presentence report and addressed its contents during the sentencing hearing, and imposed a legal sentence on the charge arising out of the crimes of which Defendant was convicted. Defendant and his counsel were given an opportunity to speak at sentencing.

¶20 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.[2]

¶21 For the foregoing reasons, Defendant's convictions and sentences are affirmed as modified.

/S/
_____
PATRICIA A. OROZCO, Presiding Judge

CONCURRING:

/S/
_____
DIANE M. JOHNSEN, Judge

/S/
_____
JON W. THOMPSON, Judge

[2] Pursuant to Rule 31.18.b, Defendant or his counsel have 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.