

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
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BY: GH

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

STATE OF ARIZONA,) 1 CA-CR 09-0559
)
Appellee,) DEPARTMENT C
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
GILDARDO INZUNZA,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2008-134566-001 DT

The Honorable Janet E. Barton, Judge

AFFIRMED AS MODIFIED

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

Pamela J. Eaton Phoenix
Attorney for Appellant

I R V I N E, Presiding 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 Gildardo Inzunza

("Inzunza") asks this court to search the record for fundamental error. Inzunza was given an opportunity to file a supplemental brief in propria persona. Inzunza has not done so. After reviewing the record, we affirm Inzunza's convictions and sentences for aggravated assault and misconduct involving weapons.

FACTS AND PROCEDURAL HISTORY

¶2 On September 5, 2008, the grand jury issued an indictment, charging Inzunza with aggravated assault, a class three dangerous felony, and misconduct involving weapons, a class four felony. At the close of the evidence, the trial court properly instructed the jury on the elements of the offense. Inzunza was convicted as charged.

¶3 The trial court conducted the sentencing hearing in compliance with Inzunza's constitutional rights and Rule 26 of the Arizona Rules of Criminal Procedure. The trial court sentenced Inzunza to nine years' imprisonment in ADOC for count one and 2.5 years' for count two with credit for 409 days presentence incarceration. The court ordered the sentences to run concurrently.

DISCUSSION

¶4 We exercise jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution and Arizona Revised Statutes section 12-120.21(A)(1) (2003). We review Inzunza's

convictions and sentences for fundamental error. See *State v. Gendron*, 168 Ariz. 153, 155, 812 P.2d 626, 628 (1991).

¶15 Our review of the record indicates that the trial court erred in its calculation of pre-sentence incarceration credit.¹ The record indicates that Inzunza was arrested on May 31, 2008. He remained in custody until the sentencing hearing on July 15, 2009, which means that Inzunza was incarcerated for 410 days. Inzunza only received 409 days of pre-sentence incarceration credit. Because pre-sentence incarceration credit calculation errors can be corrected without a remand to the trial court, see *State v. Stevens*, 173 Ariz. 494, 496, 844 P.2d 661, 663 (App. 1992); Ariz.R.Crim.P. 31.17(b), we modify the sentencing minute entry to reflect an additional one day of pre-sentence incarceration credit.

¶16 Counsel for Inzunza has advised this court that after a diligent search of the entire record, she has found no arguable question of law. 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. All of the proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure. So far as the record

¹ On April 29, 2010, we ordered the parties to file simultaneous supplemental memoranda addressing the issue of presentence incarceration credit. Counsel for Inzunza agreed that the trial court erred; the State did not file a memorandum.

reveals, Inzunza 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 Inzunza's convictions and sentences.

¶7 Upon the filing of this decision, defense counsel shall inform Inzunza 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). Inzunza shall have thirty days from the date of this 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 Inzunza to file a pro per motion for reconsideration to thirty days from the date of this decision.

CONCLUSION

¶8 We affirm Inzunza's convictions and sentences, but modify the sentencing minute entry to reflect 410 days of pre-sentence incarceration credit.

/s/

PATRICK IRVINE, Presiding Judge

CONCURRING:

/s/

MICHAEL J. BROWN, Judge

/s/

DONN KESSLER, Judge