

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



DIVISION ONE
FILED: 05/20/10
PHILIP G. URRY, CLERK
BY: JT

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) 1 CA-CR 09-0594
)
Appellee,) DEPARTMENT A
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
) Rule 111, Rules of the
GREGORY LEWIS EARNEST,) Arizona Supreme Court)
)
Appellant.)
)
)
)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2008-160051-001 DT

The Honorable Michael W. Kemp, 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 Stephen R. Collins, Deputy Public Defender
Attorneys for Appellant

P O R T L E Y, Judge

¶1 This is an appeal under *Anders v. California*, 386 U.S. 738 (1967) and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969). Counsel for Defendant Gregory Lewis Earnest has advised us that, after searching the entire record, he has been unable to discover any arguable questions of law, and has filed a brief requesting us to conduct an *Anders* review of the record. At the conclusion of his brief, however, counsel lists twenty-three issues that Defendant asked him to raise.¹ Defendant was given an opportunity to file a supplemental brief, but did not file one.

FACTS²

¶2 M.R.³ was sitting outside of a Phoenix public library on September 24, 2008, at approximately 7:40 p.m., when a man,

¹ The listed issues include: "1. Sentence was illegal and excessive; 2. Violation of civil rights - due process; 3. Suppression of evidence; 4. Fabricated evidence; 5. Perjury and conspiracy; 6. Modification of sentence; 7. False arrest; 8. False imprisonment; 9. Wrongful conviction; 10. Malicious prosecution; 11. Defamation of character; 12. Priors were invalid; 13. Burden of proof; 14. Conflict of interest; 15. Double jeopardy - priors invalid; 16. Fabricated police reports - perjury; 17. Inconsistency during trial; 18. Conspiracy; 19. Corruption in the judicial system; 20. Misidentification; 21. Self-defense; 22. Insufficiency of the evidence; and 23. Ineffective assistance of counsel."

² We review the facts in the light most favorable to sustaining the verdict. See *State v. Guerra*, 161 Ariz. 289, 293, 778 P.2d 1185, 1189 (1989).

³ We use the first initials of the victim throughout this decision to protect his privacy. See *State v. Maldonado*, 206 Ariz. 339, 341 n.1, ¶ 2, 78 P.3d 1060, 1062 n.1 (App. 2003).

later identified as Defendant, approached him carrying a bottle of beer and a sharpened stick. Defendant "charged" M.R. and struck him with the stick, causing injury to his left forearm and chest.

¶3 Defendant was charged with one count of aggravated assault, a class three felony. Following trial, a jury found Defendant guilty, and found the crime was a dangerous offense. The State subsequently proved that Defendant had two historical felony convictions, one of which was also a dangerous offense. Defendant was sentenced as a dangerous offender to the presumptive prison term of 11.25 years, with 329 days of presentence incarceration credit.

DISCUSSION

¶4 We have read and considered counsel's brief, including the list of issues raised by Defendant,⁴ and have searched the entire record for reversible error. See *Leon*, 104 Ariz. at 300, 451 P.2d at 881. We find no reversible error. All of the proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure. The record, as presented, reveals that Defendant was represented by counsel at all stages of the

⁴ Defendant's ineffective assistance of counsel claim is not properly before us. *State ex rel. Thomas v. Rayes*, 214 Ariz. 411, 415, ¶ 20, 153 P.3d 1040, 1044 (2007) (stating that "a defendant may bring ineffective assistance of counsel claims only in a Rule 32 post-conviction proceeding - not before trial, at trial, or on direct review").

proceedings, and the sentence imposed was within the statutory limits.⁵

CONCLUSION

¶5 After this decision has been filed, counsel's obligation to represent Defendant in this appeal has ended. Counsel need do no more than inform Defendant of the status of the appeal and Defendant's future options, unless counsel's review reveals 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). Defendant can, if he desires, file a motion for reconsideration or a petition for review pursuant to the Arizona Rules of Criminal Procedure.

⁵ We note that the trial court incorrectly calculated the amount of presentence incarceration credit. However, the error was to Defendant's benefit. Because the State did not appeal the credit calculation, we cannot address the discrepancy. See *State v. Dawson*, 164 Ariz. 278, 281-82, 792 P.2d 741, 744-45 (1990) (holding that a sentencing error that favors a defendant cannot be corrected absent a timely appeal by the State); *State v. Kinslow*, 165 Ariz. 503, 507, 799 P.2d 844, 848 (1990).

¶6 Accordingly, we affirm Defendant's conviction and sentence.

/s/

MAURICE PORTLEY, Presiding Judge

CONCURRING:

/s/

LAWRENCE F. WINTHROP, Judge

/s/

MARGARET H. DOWNIE, Judge