

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
FILED: 09/07/2010
RUTH WILLINGHAM,
ACTING CLERK
BY: GH

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

STATE OF ARIZONA,) 1 CA-CR 09-0736
)
Appellee,) DEPARTMENT C
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
FREDERICK LEE DAVIS, II,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
)

Appeal from the Superior Court in Yuma County

Cause No. S1400CR200701222

The Honorable John P. Plante, Judge

AFFIRMED

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

Paul J. Mattern Phoenix
Attorney for Appellant

I R V I N E, Presiding Judge

¶1 This appeal is timely 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 Frederick Lee Davis, II,

asks this court to search the record for fundamental error. Davis was given an opportunity to file a supplemental brief in propria persona. He has not done so. After reviewing the record, we affirm his probation revocation and sentences for two counts of stalking involving domestic violence, class 3 felonies in violation of Arizona Revised Statutes section 13-2923(A)(2) (2010).¹

FACTS AND PROCEDURAL HISTORY

¶2 We view the facts in the light most favorable to sustaining the trial courts judgment and resolve all inferences against Davis. *State v. Fontes*, 195 Ariz. 229, 230, ¶ 2, 986 P.2d 897, 898 (App. 1998). From March to September 2007, Davis made numerous threats to harm the victim and her family during a contentious divorce. As a result of threats he made to the victim at work, she lost her job.

¶3 On September 19, 2007, a grand jury indicted Davis on twenty-five counts involving domestic violence, including aggravated assault (Count 1, a class 6 felony); criminal trespass (Count 2, a class 6 felony); robbery (Count 3, a class 4 felony); ten counts of stalking (Counts 4, 8 and 10, class 5 felonies; and Counts 9, 12, 15, 16, 18, 20 and 24, class 3 felonies); and twelve counts of aggravated harassment (Count 5,

¹ We cite to the current version of statutes since no revisions material to this case have occurred.

a class 6 felony; and Counts 6, 7, 11, 13, 14, 17, 19, 21, 22, 23, 25, class 5 felonies).

¶4 On June 11, 2008, Davis pled guilty to Counts 9 and 15 for making death threats to the victim at work on June 18 and 26, 2007, respectively. In exchange for dismissal of the remaining counts, Davis agreed to testify as a witness in an unrelated homicide case and to delay sentencing until afterward. Due to unexpected delays in the other case, however, Davis remained incarcerated longer than anticipated and moved to withdraw the plea agreement. At a hearing on the matter, Davis agreed to proceed with sentencing instead.

¶5 On March 25, 2009, Davis received a suspended sentence of five years' intensive probation. The trial court ordered Davis to report to the adult probation department ("APD") by five p.m. the next day. Term 3 of his probation also required him to report to APD within seventy-two hours, and Term 4 required him to get APD's prior approval before moving. Davis never reported to his parole officer, and he moved to California.

¶6 On March 30, 2009, the State filed a petition to revoke Davis's probation and for a bench warrant. Davis was arrested in San Francisco on June 8, and extradited to Yuma on July 8, 2009. At the revocation hearing, Davis admitted he knew he was to report to APD on March 26 and called, explaining to

the secretary, that he could not come in. His probation officer testified that she never received a message from Davis and that he never reported to APD. She also said APD received numerous calls from concerned citizens who saw Davis at "various bars across town" from March 26 to 27. The trial court found by a preponderance of the evidence that Davis violated his probation.

¶7 On September 11, 2009, the trial court imposed concurrent, slightly aggravated terms of five years' imprisonment for both counts. Davis was given 601 days of presentence incarceration credit.² He was ordered to pay the victim \$30,000 in restitution for lost wages and any unpaid balance of the \$1654.33 for his extradition. Davis was sentenced in compliance with his constitutional rights and Rule 26 of the Arizona Rules of Criminal Procedure.

DISCUSSION

¶8 We review Davis's probation revocation and sentences for fundamental error. See *State v. Gendron*, 168 Ariz. 153, 155, 812 P.2d 626, 628 (1991). Counsel for Davis has advised this court that after a diligent search of the entire record, he has

² The trial court initially awarded 706 days of presentence incarceration. Although the trial court subsequently adjusted it to 601 days, it appears that Davis should have received less. Since the State has not filed a cross-appeal and the miscalculation favors the appellant, we will not correct it. See *State v. Dawson*, 164 Ariz. 278, 281-82, 792 P.2d 741, 744-45 (1990).

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 reveals, Davis was represented by counsel at all stages of the proceedings, and the sentence imposed was within the statutory limits. We decline to order briefing. We affirm Davis's probation revocation and sentences.

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

CONCLUSION

¶10 We affirm.

_____/s/_____
PATRICK IRVINE, Presiding Judge

CONCURRING:

_____/s/_____
MICHAEL J. BROWN, Judge

_____/s/_____
DONN KESSLER, Judge