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EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



DIVISION ONE
FILED: 11-30-2010
RUTH WILLINGHAM,
ACTING CLERK
BY: GH

STATE OF ARIZONA,) 1 CA-CR 09-0818
) 1 CA-CR 09-0819
Appellee,) (Consolidated)
)
v.) DEPARTMENT A
)
MICAH JAQUIM SMITH,) **MEMORANDUM DECISION**
)
Appellant.)
) (Not for Publication -
) Rule 111, Rules of the
) Arizona Supreme Court
)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2008-143682-002 DT; CR2007-170490-001 DT

The Honorable Kristin C. Hoffman, Judge

AFFIRMED

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

Bruce Peterson, Office of the Legal Advocate Phoenix
By Frances J. Gray, Deputy Legal Advocate
Attorneys for Appellant

B A R K E R, Judge

¶1 Micah Jaquim Smith appeals from his conviction and sentence for one count of misconduct involving weapons, a class

four felony, and from the resulting probation violation and sentence. Smith'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 searching the entire record on appeal, he finds no arguable ground for reversal. We granted Smith leave to file a supplemental brief *in propria persona*, but he did not do so. We are required to search the record for reversible error. Finding no such error, we affirm.

Facts and Procedural Background¹

¶2 In the early morning hours of July 12, 2008, the victims² in this case were in front of V1's house drinking beer. At about 4:00 AM, Defendant Smith and two other individuals approached V1's house in a dark SUV. According to Smith, he was interested in buying marijuana from the victims. In the course of his interaction with the victims, Smith and V3 got into a physical struggle and knocked into a window. The window broke and cut them. Smith then returned to the dark SUV as V1

¹ We view the facts in the light most favorable to sustaining the court's judgment and resolve all inferences against Smith. *State v. Fontes*, 195 Ariz. 229, 230, ¶ 2, 986 P.2d 897, 898 (App. 1998); *State v. Moore*, 183 Ariz. 183, 186, 901 P.2d 1213, 1216 (App. 1995).

² There are three victims in this case. The first victim "V1" lived in the house where the altercation occurred. The second victim "V2" is V1's nephew, and the third victim "V3" is V1's brother.

followed him. He fired the gun two or three times as he was getting into the vehicle.

¶13 Officer Ramirez was near V1's house during the incident. He heard gunshots and saw muzzle flashes from the passenger-side window of a dark SUV. When the dark SUV passed him on 5th Avenue, he followed it and, after broadcasting the SUV's license plate number, turned on his lights to pull the vehicle over. The vehicle, however, did not stop until Officer Ramirez turned on his siren at the access road to I-17 near Jefferson. Once the vehicle stopped, Officer Ramirez drew his weapon and ordered the suspects to put their hands up and exit the vehicle. The suspects initially complied, but a moment after putting their hands up they drove away.

¶14 Officer Reiff had heard the three gunshots from across the street near the Elks Lodge night club. He also heard Officer Ramirez's reports over the radio requesting assistance in pursuit of the suspect vehicle. Officer Reiff caught sight of the suspect vehicle after it had driven away from Officer Ramirez's stop. He joined in pursuit of the vehicle as it continued northbound on I-17. The dark SUV exited I-17 at Indian School, turned east onto Indian School, and then north onto 35th Avenue. It finally stopped in the parking lot of an apartment complex at Indian School and 35th Avenue. Officers

Reiff and Ramirez took Smith, the other passenger, and the driver into custody.

¶15 While Officers Reiff and Ramirez were pursuing the dark SUV, Officer Cunningham and three other off-duty officers approached V1's house.³ As they were doing so, Officer Cunningham and the other officers stopped a white SUV that was accelerating down the street. Although the passengers of the white SUV spoke Spanish, and Officer Cunningham did not, he was able to determine that the passengers of the white SUV were victims and the gunshots had been fired by a male in a dark SUV.⁴ Officer Cunningham briefly searched the area for shell casings and spoke with V1, remaining with him until a Spanish-speaking officer arrived.

¶16 After taking Smith and the other two individuals in the dark SUV into custody, Officer Ramirez⁵ arrived to collect V1 for a one-on-one identification of the suspects. V1 identified Smith stating "that's the one that had the gun and took my money." V1 also identified the other two individuals as the men

³ Officer Cunningham and the other off-duty officers were working as security at the Elks Lodge near V1's house. They heard the gunshots and approached V1's house on foot to respond.

⁴ The passengers did not identify Smith by name; however, Smith later admitted that he was the only one carrying a gun.

⁵ Officer Ramirez is a certified Spanish-speaking officer.

who had arrived with Smith in the dark SUV and were present while Smith demanded the money. He told the officer that Smith had taken between \$50 and \$80 from him. According to V1, Smith also took V2's cell-phone and, when V3 refused to give Smith money, he and Smith struggled with one another. After this struggle, Smith ran to the SUV, got into the front passenger seat, and the three individuals drove away. V1 remembered that Smith fired the gun two or three times from the passenger window as they left. After the one-on-one, Officer Ramirez returned V1 to his house.⁶

¶17 Smith was charged with two counts of armed robbery, a class two dangerous felony; one count of aggravated assault, a class three dangerous felony; one count of misconduct involving weapons, a class four felony; and one count of unlawful discharge of a firearm, a class six dangerous felony. After a *Donald* hearing and a settlement conference, neither of which resolved the matter, Smith went to trial. See *State v. Donald*, 198 Ariz. 406, 10 P.3d 1193 (App. 2000) (requiring hearing to assess whether a defendant understands the terms of the State's plea offer).

⁶ Officer Ramirez attempted to locate the other two victims to get more complete statements from them, but he was unable to do so.

¶18 At trial, V1, V2, and V3 testified that Smith was carrying a gun when he approached them and demanded their money. The parties stipulated that Smith was a prohibited possessor pursuant to Arizona Revised Statutes ("A.R.S.") section 13-3101(a)(6)(b).⁷ Smith had been convicted of a felony on January 16, 2008, and his civil right to possess a firearm had not been restored as of July 12, 2008. During both direct and cross examination, Smith admitted that he was a prohibited possessor due to the 2008 felony conviction, he knew he was not supposed to have a gun, and that he was carrying a gun the night of the incident. In addition to testifying that he was carrying the gun, Smith stated that the other two individuals in the SUV did not know he had a gun and that he fired the gun before getting back into the SUV.

¶19 The jury found Smith guilty on count four, misconduct involving weapons. The jury found Smith not guilty on count one

⁷ The court was not required to engage in a colloquy to ensure that Smith entered into the stipulation knowingly, voluntarily, and intelligently under *Boykin v. Alabama*, 395 U.S. 238 (1969), or Arizona Rule of Criminal Procedure 17. "[S]tipulations to facts combined with 'not guilty' pleas are 'simply not equivalent to a guilty plea for *Boykin* purposes, even if the stipulation is to all elements necessary to a conviction" *State v. Allen*, 223 Ariz. 125, ___, ¶ 14, 220 P.3d 245, 247-48 (2009). And, a colloquy under Rule 17 is not required when a defendant stipulates to facts that constitute elements of a crime, as opposed to stipulating to a prior conviction. *Id.* at ___, ¶¶ 19-20, 220 P.3d at 249 (stating that reasoning of *Morales* relates solely to prior convictions and not evidentiary stipulations).

and did not return a verdict on counts two, three, and five. Following trial, Smith pled guilty to count two, armed robbery, a class two dangerous felony. The court accepted his plea, finding that it was knowingly, voluntarily, and intelligently made, and also found that Smith was in violation of his probation in CR2007-170490-001.

¶10 Smith was sentenced to a mitigated term of 8 years for count two and the presumptive term of 4.5 years for count four. Both sentences were set to run concurrently. Due to his conviction on count four, the court found that Smith violated his probation. The court sentenced him to the presumptive term of one year to run consecutively to count four. Smith timely appealed his conviction and sentence on count four and the resulting probation violation and sentence. We have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution and A.R.S. §§ 12-120.21(A)(1) (2003), 13-4031 (2010), and 13-4033(A) (2010).

Disposition

¶11 We have reviewed the entirety of the record and found no meritorious grounds for reversal of Smith's convictions or for modification of the sentences imposed. See *Anders*, 386 U.S. at 744; *Leon*, 104 Ariz. at 300, 451 P.2d at 881. After the filing of this decision, counsel's obligations in this appeal have ended subject to the following. Counsel need do no more

than inform Smith 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). Smith has thirty days from the date of this decision to proceed, if he desires, with a *pro per* motion for reconsideration or petition for review.

/s/

DANIEL A. BARKER, Judge

CONCURRING:

/s/

DONN KESSLER, Presiding Judge

/s/

JON W. THOMPSON, Judge