

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

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 10-0012
)
Appellee,) DEPARTMENT A
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
MARCUS DAWAYNE ADAMS,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2008-144534-001 DT

The Honorable Janet E. Barton, Judge
The Honorable Larry Grant, Judge
The Honorable Rosa Mroz, Judge

AFFIRMED

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

Bruce Peterson, Legal Advocate Phoenix
By Kerri L. Chamberlin, Deputy Legal Advocate
Attorneys for Appellant

Marcus Dawayne Adams Phoenix
Appellant

W I N T H R O P, Judge

¶1 Marcus Dawayne Adams ("Appellant") appeals from his conviction and sentence for misconduct involving weapons. Appellant's counsel has filed a brief in accordance with *Smith v. Robbins*, 528 U.S. 259 (2000); *Anders v. California*, 386 U.S. 738 (1967); and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), stating that she has searched the record on appeal and found no arguable question of law that is not frivolous. Appellant's counsel therefore requests that we review the record for fundamental error. See *State v. Clark*, 196 Ariz. 530, 537, ¶ 30, 2 P.3d 89, 96 (App. 1999) (stating that this court reviews the entire record for reversible error). This court has also allowed Appellant to file a supplemental brief *in propria persona*, and he has done so.

¶2 We have appellate jurisdiction pursuant to the Arizona Constitution, Article 6, Section 9, and Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1) (2003), 13-4031 (2010), and 13-4033(A) (2010). Finding no reversible error, we affirm Appellant's conviction and sentence.

PROCEDURAL HISTORY AND FACTS¹

¶3 On July 25, 2008, a grand jury issued an indictment, charging Appellant with knowingly possessing a deadly weapon (a

¹ We review the facts in the light most favorable to sustaining the verdict and resolve all reasonable inferences against Appellant. See *State v. Kiper*, 181 Ariz. 62, 64, 887 P.2d 592, 594 (App. 1994).

gun) while being a prohibited possessor, a class four felony in violation of A.R.S § 13-3102(A)(4) (Supp. 2010).² The State later alleged that Appellant had three historical prior felony convictions and had committed the charged offense while on release from confinement.

¶4 Before trial, Appellant moved to suppress evidence gathered from what he claimed was an illegal stop. The trial court held an evidentiary hearing on January 16, 2009.

¶5 At that evidentiary hearing, the State presented evidence supporting the following facts: On the morning of July 16, 2008, Phoenix police officers were patrolling in an area where someone had run from them the previous evening. Officer Christopher Outram observed a red Chevy Cavalier, which was later determined to be driven by Appellant, and the officer eventually drove his vehicle to a position directly behind the Cavalier, facing northbound on 15th Avenue at its intersection with Glendale Avenue, where Appellant was waiting for a green light in the left-hand turn lane. When the light turned green, Appellant made a wide left turn onto Glendale Avenue, entering the westbound lane nearest the curb (the number three lane) rather than the lane nearest the middle of the road (the number one lane). The officer immediately flashed his lights, sounded

² We cite the current version of the applicable statute because no revisions material to this decision have since occurred.

his siren, and followed Appellant, who turned right into an apartment complex entrance, which the officer estimated was located approximately 300 feet from the intersection.

¶16 The State contended that the officer's stop was legal because he believed Appellant had violated a traffic law, specifically A.R.S. § 28-751(2) (2004), which states in pertinent part: "If practicable the driver shall make the left turn from the left of the center of the intersection and shall make the turn to the left lane immediately available for the driver's direction of traffic." Appellant maintained that his destination was the apartment complex, and that destination was so close to the intersection that a turn into the "left lane immediately available" was not "practicable."³ The State pointed out that when the officer initiated the stop, he could not have known Appellant's destination. The court agreed with the State that the issue was whether the officer had a reasonable suspicion Appellant had committed a traffic violation, and based on the evidence presented, found that the officer did have such a reasonable suspicion. Consequently, the court denied

³ Appellant presented as a witness an investigator for the Office of the Legal Advocate, a former police officer who testified that the distance from the west curb of 15th Avenue to the entrance of the apartment complex was 189 feet and who estimated that the travel time for such a distance "would be less than five seconds."

Appellant's motion to suppress the evidence found after the traffic stop.

¶7 Evidence related to the traffic stop was admitted against Appellant during his trial, which began on June 9, 2009. Appellant was not present at trial, but he was aware that the trial could proceed in his absence. During trial, the State presented evidence to support the following facts: When Officer Outram initiated the traffic stop, he drove into the parking lot of the apartment complex and stopped his car behind Appellant's vehicle. Other police officers arrived and parked behind Officer Outram's vehicle. Appellant exited and ignored commands to return to his vehicle, backed away from the police while shouting at them, and began to run. After a brief chase, the officers caught and searched Appellant.

¶8 When the police searched Appellant's pockets, they found a sight for a nine millimeter handgun, a trigger lock, an empty shell casing, and an instruction manual for a nine millimeter handgun. When they searched the car Appellant had been driving, the police found a nine millimeter handgun underneath the driver's seat. The car's passenger remained in the car during the chase, and she was placed in custody after a background check revealed she had an outstanding civil arrest warrant.

¶9 At trial, an expert witness testified that the empty shell casing found in Appellant's pocket had been fired from the handgun found in the car. The State also introduced exhibits and testimony from a fingerprint expert indicating Appellant's status as a convicted felon. The jury found Appellant guilty as charged.

¶10 Before sentencing, the court found that Appellant had three historical prior felony offenses and had been on release from confinement at the time of the current offense. The court sentenced Appellant to a slightly aggravated term of 10.5 years' incarceration in the Arizona Department of Corrections. Appellant received credit for 201 days of presentence incarceration. Appellant filed a timely notice of appeal.

ANALYSIS

A. The Issue Raised in Appellant's Supplemental Brief

¶11 In his supplemental brief, Appellant addresses in various ways the issue whether the court abused its discretion in denying his motion to suppress the evidence gathered by the police after they stopped his vehicle. During the evidentiary hearing, the court needed to decide whether Officer Outram had a "reasonable suspicion" that a traffic law had been violated when he stopped Appellant. See *State v. Richcreek*, 187 Ariz. 501, 505, 930 P.2d 1304, 1308 (1997). If the stop was not based on a reasonable suspicion that Appellant had broken the law, then the

stop was an impermissible seizure under the Fourth Amendment, and evidence gathered pursuant to that stop should be suppressed. See *id.* at 504-05, 930 P.2d at 1307-08.

¶12 We review the trial court's ruling on a motion to suppress evidence for a clear abuse of discretion. *State v. Sanchez*, 200 Ariz. 163, 165, ¶ 5, 24 P.3d 610, 612 (App. 2001). Additionally, as we have noted, we view the evidence in the light most favorable to upholding the court's factual findings, and although we review *de novo* legal conclusions on which the court's ruling rests, we will uphold the court's ruling if it is "legally correct for any reason supported by the record." *State v. Childress*, 222 Ariz. 334, 338, ¶ 9, 214 P.3d 422, 426 (App. 2009) (citations omitted). We will find that a court has abused its discretion if "the reasons given by the court for its decision are clearly untenable, legally incorrect, or amount to a denial of justice." *Id.* (citation omitted).

¶13 At the suppression hearing, the evidence presented allowed the trial court to find that Officer Outram acted with a reasonable suspicion of unlawful activity when he stopped Appellant. The testimony indicated that the officer conducted a stop of Appellant's vehicle only after Appellant had turned into the lane farthest from the center of the street. The State argued that Appellant's wide turn created a reasonable suspicion that Appellant had violated a traffic law. Although Appellant

addressed that argument by claiming he was permitted to make the wide turn because his ultimate destination was near the intersection, the evidence did not suggest that the officer knew or had reason to know Appellant's destination. The trial court, therefore, did not abuse its discretion when it concluded that the officer had a reasonable suspicion Appellant had violated the law, concluded the traffic stop was legal, and admitted the evidence found pursuant to the stop.

B. The Remaining Analysis

¶14 We have reviewed the entire record for reversible error and find none. See *Leon*, 104 Ariz. at 300, 451 P.2d at 881; *Clark*, 196 Ariz. at 537, ¶ 30, 2 P.3d at 96. The evidence presented at trial was substantial and supports the verdict, and the sentence was within the statutory limits. Appellant was represented by counsel at all stages of the proceedings and was given the opportunity to speak at sentencing. The proceedings were conducted in compliance with his constitutional and statutory rights and the Arizona Rules of Criminal Procedure.

¶15 After filing of this decision, defense counsel's obligations pertaining to Appellant's representation in this appeal have ended. Counsel need do no more than inform Appellant of the status of the appeal and of his future options, unless counsel's review reveals an issue appropriate for petition for review to the Arizona Supreme Court. See *State v.*

Shattuck, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984).
Appellant 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.

CONCLUSION

¶16 Appellant's conviction and sentence are affirmed.

_____/S/_____
LAWRENCE F. WINTHROP, Judge

CONCURRING:

_____/S/_____
PATRICIA A. OROZCO, Presiding Judge

_____/S/_____
DANIEL A. BARKER, Judge