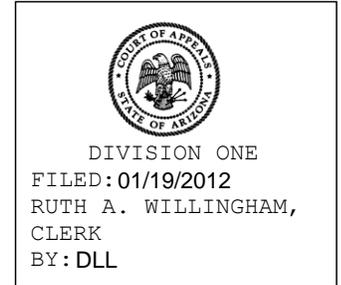


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



STATE OF ARIZONA,) 1 CA-CR 11-0027
)
Appellee,) DEPARTMENT D
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
) Rule 111, Rules of the
MICHAEL GENE MITCHELL,) Arizona Supreme Court)
)
Appellant.)
)
)
)
)

Appeal from the Superior Court in Mohave County

Cause No. CR2008-1055

The Honorable Derek C. Carlisle, Judge Pro Tempore

AFFIRMED

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

Jill L. Evans, Mohave County Appellate Defender Kingman
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 Michael Gene Mitchell ("Defendant") has advised us that, after searching the entire record, she 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. Defendant has not taken the opportunity to file a supplemental brief.

FACTS¹

¶2 Defendant was arrested in July 2008 after police officers discovered approximately twenty-one grams of methamphetamine and drug paraphernalia at a Fort Mohave, Arizona residence where he was staying.² Defendant was taken to a police station and advised of his *Miranda*³ rights. He indicated he understood his rights and agreed to speak with a detective.⁴

¶3 Defendant told the detective that he lived at the residence, used methamphetamine on a daily basis, and knew there

¹ We review the facts in the light most favorable to sustaining the verdict. *State v. Guerra*, 161 Ariz. 289, 293, 778 P.2d 1185, 1189 (1989) (citation omitted).

² The search and seizure were conducted pursuant to a search warrant.

³ *Miranda v. Arizona*, 384 U.S. 436 (1966).

⁴ Defendant's interview was recorded and the jury viewed the video recording at trial.

were drugs in the house.⁵ According to the detective, Defendant indicated he sold methamphetamine for his girlfriend, the homeowner. Defendant testified, however, that he would do odd jobs around the house in exchange for drugs, and denied any drug sale activity.

¶4 Defendant was charged with possession of methamphetamine, a dangerous drug, for sale, and possession of drug paraphernalia. The jury found Defendant not guilty of possession of methamphetamine for sale, but guilty of the lesser included offense of possession of at least nine grams of methamphetamine, a class four felony, and possession of drug paraphernalia, a class six felony.

¶5 The court found that that the amount of drugs seized at the residence was an aggravating factor as to count one and that a stipulated prior felony conviction was an aggravating factor applicable to both counts. The court imposed concurrent aggravated sentences of three years and one and one-half years in prison, respectively, and Defendant received thirteen days of presentence incarceration credit.⁶

⁵ Defendant testified that he was staying at the residence and was aware of the drug activity there.

⁶ The sentencing hearing for count two was held two days after Defendant was sentenced for count one on January 10, 2011, but the judge ordered that the count two term begin retroactively with the sentence imposed for count one.

¶6 We have jurisdiction over this appeal pursuant to Article 6, Section 9, of the Arizona Constitution, and Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1) (West 2011), 13-4031 (West 2011), and 13-4033(A)(1) (West 2011).

DISCUSSION

¶7 We have read and considered counsel's brief and have searched the entire 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. The record, as presented, reveals that Defendant was represented by counsel at all stages of the proceedings, the sentence imposed was within the statutory limits, and the presentence incarceration credit was properly calculated and applied to each concurrent sentence.

CONCLUSION

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

¶9 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. *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984).

Defendant can, if desired, file a motion for reconsideration or petition for review pursuant to the Arizona Rules of Criminal Procedure.

/s/

MAURICE PORTLEY, Judge

CONCURRING:

/s/

JON W. THOMPSON, Presiding Judge

/s/

JOHN C. GEMMILL, Judge