

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: 05/10/2012
RUTH A. WILLINGHAM,
CLERK
BY: sls

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) No. 1 CA-CR 11-0318
)
Appellee,) DEPARTMENT A
)
v.) **MEMORANDUM DECISION**
)
SANA ADEL DAVIS,) (Not for Publication -
) Rule 111, Rules of the
Appellant.) Arizona Supreme Court)
)

Appeal from the Superior Court in Mohave County

Cause No. S8015CR201000670

The Honorable Steven F. Conn, Judge

AFFIRMED AS MODIFIED

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

Jill L. Evans, Mohave County Appellate Defender Kingman
Attorneys for Appellant

T I M M E R, Judge

¶1 Sana Adel Davis appeals from her convictions and resulting sentences after a jury found her guilty of possession of dangerous drugs with intent to sell (methamphetamine), a class two felony, and possession of drug paraphernalia

(methamphetamine), a class six felony. Davis's counsel 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. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999), advising this court that after a search of the entire record on appeal, she found no arguable question of law that is not frivolous. This court granted Davis an opportunity to file a supplemental brief in propria persona, but she has not done so. We have jurisdiction to consider 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), 13-4031, and -4033 (West 2012).¹ For the following reasons, we affirm Davis's convictions but modify her sentences to reflect ninety-three days' presentence incarceration credit.

DISCUSSION

¶2 We have read and considered counsel's brief and have searched the entire record for reversible error. *State v. Leon*, 104 Ariz. 297, 300, 451 P.2d 878, 881 (1969). We find none. The record shows that Davis was represented by counsel at all stages of the proceedings and on appeal, and that the trial court afforded Davis all her rights under the constitution, our statutes, and the Arizona Rules of Criminal Procedure. Davis's

¹ Absent material revisions after the date of an alleged offense, we cite a statute's current version.

sentence falls within the range prescribed by law. *Clark*, 196 Ariz. at 541, ¶ 50, 2 P.3d at 100.

¶3 Our review of the record reveals the superior court failed to grant Davis sufficient presentence incarceration credit. Under A.R.S. § 13-712(B), “[a]ll time actually spent in custody pursuant to an offense until the prisoner is sentenced to imprisonment . . . shall be credited against the term of imprisonment.” Custody commences “when a defendant is booked into a detention facility,” but does not include the date of imposition of sentence. *State v. Carnegie*, 174 Ariz. 452, 453-54, 850 P.2d 690, 691-92 (App. 1993); *State v. Hamilton*, 153 Ariz. 244, 245-46, 735 P.2d 854, 855-56 (App. 1987).

¶4 The court granted Davis ninety-two days’ presentence incarceration credit against each of the concurrent sentences imposed for the two convictions; we conclude, however, Davis was entitled to ninety-three days’ presentence incarceration credit. Davis was originally arrested on July 6, 2010 and was released on September 7, 2010, for sixty-four days of incarceration. She was then taken into custody on March 31, 2011 until she was sentenced on April 29, 2011, for an additional twenty-nine days of incarceration, not including the sentencing date. The two periods combined total ninety-three days of incarceration. The trial court committed fundamental error by crediting Davis with only ninety-two days’ presentence incarceration credit. *State*

v. Ritch, 160 Ariz. 495, 498, 774 P.2d 234, 237 (App. 1989) ("The trial court's failure to grant appellant full credit for presentence incarceration clearly constituted fundamental error."). Pursuant to A.R.S. § 13-4037, we modify each of Davis's concurrent sentences to reflect ninety-three days' presentence incarceration credit.

CONCLUSION

¶15 After the filing of this decision, counsel's obligations pertaining to Davis's representation in this appeal have ended. Counsel need do no more than inform Davis of the status of the appeal and Davis'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). Davis shall have thirty days from the date of this decision to proceed, if she desires, with an in propria persona motion for reconsideration or petition for review.

¶16 Accordingly, we affirm Davis's convictions and modify her sentences to reflect ninety-three days' presentence incarceration credit.

/s/
Ann A. Scott Timmer, Judge

CONCURRING:

/s/
Maurice Portley, Presiding Judge

/s/
Andrew W. Gould, Judge