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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



DIVISION ONE
FILED: 06/12/2012
RUTH A. WILLINGHAM,
CLERK
BY: sls

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) No. 1 CA-CR 11-0654
) 1 CA-CR 11-0658
Appellee,) (Consolidated)
)
v.) DEPARTMENT C
)
AKON NON AKON MALETH,) **MEMORANDUM DECISION**
) (Not for Publication -
Appellant.) Rule 111, Rules of the
) Arizona Supreme Court)
)
)
)
_____)

Appeal from the Superior Court in Maricopa County

Cause Nos. CR2007-104432-001, CR2011-101895-001

The Honorable Peter C. Reinstein, Judge

AFFIRMED

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

James J. Haas, Maricopa County Public Defender Phoenix
By Paul J. Prato, Deputy Public Defender
Attorneys for Appellant

B R O W N, Judge

¶1 Akon Non Akon Maleth appeals his conviction and sentence for one count of possession of marijuana for sale and

the trial court's order revoking his probation on a prior offense.¹ Counsel for Maleth 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 that after searching the record on appeal, he was unable to find any arguable grounds for reversal. Maleth was granted the opportunity to file a supplemental brief *in propria persona*, but he has not done so.

¶12 Our obligation is to review the entire record for reversible error. *State v. Clark*, 196 Ariz. 530, 537, ¶ 30, 2 P.3d 89, 96 (App. 1999). We view the facts in the light most favorable to sustaining the conviction and resolve all reasonable inferences against Maleth. *State v. Guerra*, 161 Ariz. 289, 293, 778 P.2d 1185, 1189 (1989). Finding no reversible error, we affirm.

¶13 Maleth was charged by direct complaint with possession of marijuana for sale, a class four felony, in violation of Arizona Revised Statutes ("A.R.S.") section 13-3405 (Supp. 2011).² The State also filed an "Allegation of Offenses Committed While Released from Confinement" pursuant to A.R.S.

¹ These two cases were consolidated for purposes of this appeal.

² Absent material revision after the date of the offense, we cite the statute's current version.

§ 13-708(C) (Supp. 2011) for Maleth's alleged commission of a felony while on probation. Maleth was on probation for a 2007 conviction for threatening and intimidating, a class six felony. One of the conditions of probation imposed was that he "obey all laws." The following evidence was presented at trial.

¶4 In January 2011, Officers Harris and Elfritz were patrolling an area of central Phoenix. From a concealed location, they observed Maleth participate in two separate exchanges in which it appeared that Maleth handed a "small green item" in a "small clear baggie" to other individuals in exchange for money. The officers left their surveillance location and approached Maleth. The officers asked Maleth for permission to search him and he consented. They found several zip-lock bags of what they believed to be marijuana, and \$84 in cash. The officers placed Maleth under arrest and conducted a field test on the substance to confirm it was marijuana. A forensic scientist later confirmed that the substance was in fact 19.7 grams of marijuana, a usable amount.

¶5 Officer Elfritz advised Maleth of his *Miranda*³ rights; Maleth stated that he understood his *Miranda* rights and agreed to voluntarily answer questions. According to the officer, Maleth admitted that the marijuana belonged to him, that he was

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

selling it, and that the money found in his pocket was from the sale of marijuana.

¶16 Prior to trial, Maleth requested a voluntariness hearing, arguing that his statements to the officer should be suppressed. Because English is not Maleth's first language and his proficiency in English is limited, Maleth argued there was no way to ensure he understood his rights or the questions asked by the officer because a translator was not provided at the time of his arrest. At the voluntariness hearing, the trial court determined that Maleth's statements to the officer were in compliance with *Miranda*.

¶17 At trial, Maleth stated that he did not fluently understand English,⁴ but admitted that he understood the *Miranda* rights. He denied that he sold marijuana to the two individuals observed by the officers, denied ever selling drugs, and denied giving the officers permission to search him. Maleth denied answering any of the officer's questions and stated that the money in his pocket was from a temporary job. Maleth admitted to possession of marijuana, but stated it was for personal use only and not for sale.

¶18 The jury found Maleth guilty of possession of marijuana for sale. Maleth was sentenced as a repetitive

⁴ Maleth was provided with the assistance of a translator at all pertinent proceedings.

offender⁵ to the presumptive term of ten years imprisonment with 231 days of presentence incarceration credit. Based on this conviction, the court revoked Maleth's probation, sentencing him to a concurrent term of 620 days of imprisonment with 620 days of presentence incarceration credit.⁶ This timely appeal followed.

¶9 We have searched the entire record for reversible error and find none. All of the proceedings were conducted in accordance with the Arizona Rules of Criminal Procedure. The record shows Maleth was present and represented by counsel at all pertinent stages of the proceedings and at the disposition hearing, was afforded the opportunity to speak before sentencing, and the sentences imposed were within statutory limits. Accordingly, we affirm Maleth's conviction, the revocation of his probation, and the resulting sentences.

¶10 Upon the filing of this decision, counsel shall inform Maleth of the status of the appeal and his options. Defense counsel has no further obligations unless, upon review, counsel finds an issue appropriate for submission to the Arizona Supreme

⁵ Maleth admitted during his testimony to prior felony convictions from Maricopa County and the court used these convictions to sentence Maleth as a repetitive offender, pursuant to A.R.S. § 13-703(C) (Supp. 2011).

⁶ Maleth received additional presentence incarceration credit for the probation revocation because of time served previous to the possession of marijuana for sale charge.

Court by petition for review. See *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984). Maleth shall have thirty days from the date of this decision to proceed, if he so desires, with a *pro per* motion for reconsideration or petition for review.

/s/

MICHAEL J. BROWN, Presiding Judge

CONCURRING:

/s/

MARGARET H. DOWNIE, Judge

/s/

RANDALL M. HOWE, Judge