IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

AARON MICHAEL WAMSLEY,
Appellant.

No. 2 CA-CR 2015-0186
Filed February 3, 2016

Appeal from the Superior Court in Pima County
No. CR20133644001
The Honorable Richard D. Nichols, Judge

AFFIRMED AS CORRECTED

COUNSEL

Steven R. Sonenberg, Pima County Public Defender
By Michael J. Miller, Assistant Public Defender, Tucson
Counsel for Appellant

MEMORANDUM DECISION

Judge Miller authored the decision of the Court, in which Presiding Judge Vásquez and Chief Judge Eckerstrom concurred.

M I L L E R, Judge:

¶1 Appellant Aaron Wamsley was charged with possession of a dangerous drug for sale (count one), possession of a dangerous drug (count two), possession of drug paraphernalia (count three), and use of a wire or electronic communication in a drug/narcotic-related transaction (count four). Following a jury trial, he was convicted of the first three counts.[1] The trial court sentenced Wamsley to concurrent, minimum and mitigated prison terms, the longest of which is five years, and granted him fifty-six days of presentence incarceration credit.

¶2 Counsel has filed a brief in compliance with *Anders v. California*, 386 U.S. 738 (1967), avowing he has reviewed the record and found no "arguably meritorious issue to raise on appeal," and asking that we search the record for "error." In compliance with *State v. Clark*, 196 Ariz. 530, ¶ 32, 2 P.3d 89, 97 (App. 1999), counsel has also provided "a detailed factual and procedural history of the case with citations to the record, [so] this court can satisfy itself that counsel has in fact thoroughly reviewed the record." Wamsley has not filed a supplemental brief.

¶3 Viewing the evidence in the light most favorable to upholding the jury's verdicts, *see State v. Tamplin*, 195 Ariz. 246, ¶ 2, 986 P.2d 914, 914 (App. 1999), the evidence established that, after receiving information in August 2013 that an individual known as "Aaron" was selling methamphetamine, a police officer sent a text message to Wamsley at the number provided and later spoke with

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[1]Wamsley's first trial ended in a mistrial.

him to arrange a drug purchase. At the arranged meeting, Wamsley handed one officer a baggie containing a "sample" of methamphetamine and then sold the officers an additional 1.097 grams of methamphetamine. During a pursuit immediately following the sale, Wamsley threw "a prescription orange pill bottle" containing methamphetamine on the ground. We conclude substantial evidence supported finding the elements necessary for Wamsley's convictions, *see* A.R.S. §§ 13-3407(A)(1), (2) and 13-3415(A), and the sentences are lawful and were imposed properly, *see* A.R.S. §§ 13-3407(E) and 13-702(D).

¶4 Shortly after sentencing Wamsley, the trial court entered an amended sentencing order granting Wamsley's motion to strike the presentence report. The court ordered that a new report be prepared "with the corrections to show that the offenses are non-repetitive and to include the appropriate sentencing ranges"; amending the prior sentencing order to show that all of the convictions were for non-repetitive, rather than repetitive offenses; and, ordering that the sentencing minute entry "remain in full force and effect in all other respects." However, the court did not order that all references to A.R.S. § 13-703, the sentencing statute for repetitive offenders, be deleted from the sentencing order and replaced with the proper sentencing statutes, A.R.S. § 13-3407(E) for count one and § 13-702(D) for counts two and three.

¶5 But because it is clear from the amended order, the sentences imposed, and the sentencing transcript that the trial court intended to and did sentence Wamsley as a non-repetitive offender, the sentencing order shall be corrected to show that Wamsley was sentenced to a minimum sentence pursuant to § 13-3407(E) and to mitigated sentences pursuant to § 13-702(D), and not pursuant to § 13-703. *See State v. Provenzino*, 221 Ariz. 364, ¶¶ 25-26, 212 P.3d 56, 62 (App. 2009) (discrepancy between oral pronouncement of sentence and minute entry may be resolved by reference to record showing dispositive evidence of trial court's intent); *State v. Lopez*, 230 Ariz. 15, n.2, 279 P.3d 640, 643 n.2 (App. 2012) ("When we can ascertain the trial court's intent from the record, we need not remand for clarification.").

¶6 Pursuant to our obligation under *Anders*, we have searched the record for fundamental, reversible error and have found none. *See State v. Fuller*, 143 Ariz. 571, 575, 694 P.2d 1185, 1189 (1985). Accordingly, we affirm Wamsley's convictions and sentences but correct the sentencing order consistent with this decision.