

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



DIVISION ONE  
FILED: 09/20/2012  
RUTH A. WILLINGHAM,  
CLERK  
BY: sls

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

STATE OF ARIZONA, ) No. 1 CA-CR 11-0369  
)  
Appellee, ) DEPARTMENT D  
)  
v. ) **MEMORANDUM DECISION**  
) (Not for Publication -  
JEREMY MICHAEL MORTON, ) Rule 111, Rules of the  
) Arizona Supreme Court)  
Appellant. )  
)  
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2010-105227-001DT

The Honorable Roger E. Brodman, Judge

**AFFIRMED**

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

James J. Haas, Maricopa County Public Defender Phoenix  
By Margaret M. Green, Deputy Public Defender  
Attorneys for Appellant

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**S W A N N**, Judge

¶1 Defendant Jeremy Michael Morton appeals his conviction and sentence for possession or use of dangerous drugs. This case comes to us as an appeal under *Anders v. California*, 386

U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969). Defendant's appellate counsel has searched the record on appeal and found no arguable non-frivolous question of law, and asks us to review the record for fundamental error. See *Anders*, 386 U.S. 738; *Smith v. Robbins*, 528 U.S. 259 (2000); *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999). Defendant was given the opportunity to file a supplemental brief *in propria persona* but did not do so.

¶12 We have searched the record for fundamental error and find none. Accordingly, we affirm.

#### FACTS AND PROCEDURAL HISTORY

¶13 On April 4, 2010, Defendant was charged with five counts: Forgery (Count 1); Criminal Possession of a Forgery Device (Count 2); Possession of Drug Paraphernalia (Count 3); Theft (Count 4); and Possession or Use of Dangerous Drugs (Count 5). Counts 1, 2, and 4 were severed. Later, Count 3 was also severed. Therefore Count 5 is the only count at issue in this case. Defendant was arraigned and entered a not guilty plea on all counts.

¶14 The pertinent facts follow. On January 14, 2010, Defendant contacted a Big O Tires store in Scottsdale, Arizona, and inquired about buying tires and rims for his gold-colored Infiniti SUV (the "vehicle"). Defendant informed Big O Tires that he would be paying for the tires and the rims with a

business check. The same day, Defendant had the tires and rims installed, at a cost of \$1,400. Defendant paid the bill with an Arizona's Finest Auto Detail business check. A few days later, Big O Tires was informed that the check was counterfeit. Defendant again contacted the tire store and said that he was interested in buying more tires and rims. The tire store contacted the Scottsdale Police Department. Defendant was identified from a photograph lineup as the person who paid for the tires and rims with a counterfeit check.

¶15 On January 27, 2010, a search warrant was issued for Defendant's vehicle and residence. Later that day, Detective Aaron Crawford pulled over the vehicle. Defendant was a passenger in the vehicle. Crawford recognized Defendant from photographs that he had been shown. Crawford advised Defendant that he was under arrest. Crawford proceeded to remove Defendant from the vehicle and search his person, and he discovered a small plastic baggie with a seal at the top that contained a "white crystalline substance." The substance was tested in the Scottsdale crime laboratory and was determined to be methamphetamine.

¶16 After considering the evidence, the jury found Defendant guilty of possession or use of dangerous drugs (Count

5).<sup>1</sup> The court entered a combined judgment on Counts 1, 4, and 5 and sentenced Defendant to ten years in prison. Defendant timely appeals his conviction and sentence. We have jurisdiction under Article 6, Section 9 of the Arizona Constitution and A.R.S. §§ 12-120.21(A)(1), 13-4031, and 13-4033(A)(1).

#### *DISCUSSION*

¶7 The record reveals no fundamental error. Defendant was represented by counsel at all critical proceedings. Defendant was absent from the second day of trial. The court found that because Defendant was not present, he voluntarily waived his appearance. Ariz. R. of Crim. P. 9.1 states that a defendant:

may waive the right to be present at any proceeding by voluntarily absenting himself or herself from it. The court may infer that an absence is voluntary if the defendant had personal notice of the time of the proceeding, the right to be present at it, and a warning that the proceeding would go forward in his or her absence should he or she fail to appear.

Defendant was present at the first day of trial. Defendant had notice that the trial would continue the next day at 10:15 a.m. The court did not err by finding that Defendant voluntarily absented himself from trial.

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<sup>1</sup> In a separate proceeding, Defendant pled guilty to Count 1 (forgery) and Count 4 (theft).

¶8 The record of voir dire does not demonstrate the empanelment of any biased jurors, and the jury was properly composed of eight jurors and two alternates. See Ariz. R. Crim. P. 18.1(a); A.R.S. § 21-102(B). The evidence that the state presented at trial was properly admissible. After the jury returned its verdict, the court received and considered a presentence report and entered a combined sentence on Counts 1, 4, and 5. The court, in its discretion, imposed a legal sentence of 10 years in prison on Count 1 and 10 years on Count 5, to be served concurrently.<sup>2</sup> Defendant received presentence incarceration credit of 246 days, which was correctly calculated.

#### CONCLUSION

¶9 We have reviewed the record for fundamental error and find none. See *Leon*, 104 Ariz. at 300, 451 P.2d at 881. Accordingly, we affirm Defendant's conviction and sentence.

¶10 Defense counsel's obligations pertaining to this appeal have come to an end. See *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984). Unless, upon review, counsel discovers an issue appropriate for petition for review to the Arizona Supreme Court, counsel must only inform Defendant of the status of this appeal and his future options. *Id.* Defendant has thirty days from the date of this decision to file

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<sup>2</sup> Defendant received 3 years of probation for Count 4.

a petition for review *in propria persona*. See Ariz. R. Crim. P. 31.19(a). Upon the court's own motion, Defendant has thirty days from the date of this decision in which to file a motion for reconsideration.

/s/

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PETER B. SWANN, Judge

CONCURRING:

/s/

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JOHN C. GEMMILL, Presiding Judge

/s/

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ANDREW W. GOULD, Judge