**IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE**
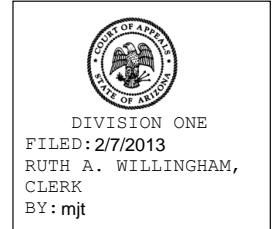
STATE OF ARIZONA,	)	1 CA-CR 11-0717
	)	
Appellee,	)	DEPARTMENT B
	)	
v.	)	**MEMORANDUM DECISION**
	)	(Not for Publication –
	)	Rule 111, Rules of the
JOHNATHAN TORRES HERNANDEZ,	)	Arizona Supreme Court)
	)	
Appellant.	)	
	)	
	)	
	)	

Appeal from the Superior Court in Maricopa County

Cause No. CR2010-140049-001

The Honorable Kristin C. Hoffman, Judge

AFFIRMED AS MODIFIED

Thomas C. Horne, 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   Tennie B. Martin, Deputy Public Defender
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 Defendant Johnathan Torres Hernandez 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 was given the opportunity to file a supplemental brief but has not done so.

FACTS[1]

¶2   The father of the thirteen-year-old victim called the police after he discovered that Hernandez had engaged in sexual relations with his child. After the police conducted an investigation, Hernandez was subsequently indicted for two counts of sexual conduct with a minor and one count of child prostitution, all class 2 felonies and dangerous crimes against children.

¶3   During trial, the victim testified that Hernandez sent her a text message and offered her $1500 if he could perform oral sex on her. He picked her up at a Safeway store and drove her to a motel in Tolleson. She testified that he took off her

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[1] We view the facts "in the light most favorable to sustaining the verdict, and resolve all reasonable inferences against the defendant." *State v. Rienhardt*, 190 Ariz. 579, 588-89, 951 P.2d 454, 463-64 (1997).

clothes, and after she was on the bed, put his penis in her vagina. She saved the underwear she was wearing and later gave it to the police.

¶4   A criminalist from the Department of Public Safety ("D.P.S.") crime lab testified that she found sperm in the crotch area of the victim's underwear and preserved the DNA for analysis. Additionally, a forensic biochemist from the D.P.S. crime lab testified that the DNA found on the victim's underwear matched Hernandez's DNA sample at twelve locations.

¶5   Hernandez testified on his own behalf. He offered his version of the events but specifically denied having intercourse with the thirteen-year-old. Despite his testimony, the jury found him guilty of one count of sexual abuse of a minor by having sexual intercourse with the victim, and that the victim was under the age of fourteen. The jury, however, found him not guilty of the second count (digital penetration) and was unable to reach a verdict on the child prostitution charge. Hernandez was subsequently sentenced to a slightly mitigated term of eighteen years in prison. He received 431 days of presentence incarceration credit.

¶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), 13-4031, and -4033(A)(1) (West 2013).

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 that all of the proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure. We further find that the record demonstrates that Hernandez was represented by counsel at all stages of the proceeding.

¶8 The evidence, moreover, supports the conviction. Hernandez admitted being in the motel room with the victim. Although he disputed how his DNA found its way to the crotch area of the victim's underwear, the jury had to determine the credibility of the witnesses and whether the State proved its case beyond a reasonable doubt. *State v. Piatt*, 132 Ariz. 145, 150-51, 644 P.2d 881, 886-87 (1981). The jury was properly instructed and concluded that the State proved beyond a reasonable doubt that Hernandeaz had sexual intercourse with the young teen. Consequently, we find no error by his conviction.

¶9 In reviewing the sentence, we conclude that the sentence is within the statutory range. We note, however, that the presentence calculation is one day short. The record reveals that Hernandez was taken into custody on August 1, 2010, and remained in custody until he was sentenced on October 7, 2011. He was, as a result, in pretrial incarceration for 432

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days. Consequently, we modify his sentence to reflect 432 days of presentence incarceration credit. *See* Ariz. R. Crim. P. 31.17(b); *State v. Stevens*, 173 Ariz. 494, 495-96, 844 P.2d 661, 662-63 (App. 1992) (correcting a miscalculation in presentence credit by modifying the sentence without remanding back to the trial court).

¶**10**   Having completed our review of the record, we find no error much less fundamental error. Accordingly, there is no basis for us to conclude that Hernandez is entitled to any appellate relief.

¶**11**   After this decision is filed, counsel's obligation to represent Defendant in this appeal has ended. Counsel must only inform Defendant of the status of the appeal and Defendant's future options, unless counsel identifies 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 may, if desired, file a motion for reconsideration or petition for review pursuant to the Arizona Rules of Criminal Procedure.

CONCLUSION

¶**12**   Accordingly, we affirm Defendant's conviction and
sentence, but modify his presentence incarceration credit.

                                    /s/
                                    _____
                                    MAURICE PORTLEY, Presiding Judge

CONCURRING:

/s/
_____
PATRICIA A. OROZCO, Judge

/s/
_____
RANDALL M. HOWE, Judge