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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

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE



DIVISION ONE  
FILED: 10/30/2012  
RUTH A. WILLINGHAM,  
CLERK  
BY: sls

STATE OF ARIZONA, ) 1 CA-CR 11-0781  
)  
Appellee, ) DEPARTMENT S  
)  
v. ) **MEMORANDUM DECISION**  
) (Not for Publication -  
CHAD EDWARD WILSON, ) Rule 111, Rules of the  
) Arizona Supreme Court)  
Appellant. )  
)

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Appeal from the Superior Court in Maricopa County

Cause No. CR2010-117224-001

The Honorable Connie Contes, Judge

**AFFIRMED AS MODIFIED**

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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 Peg Green, Deputy Public Defender  
Attorneys for Appellant

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W I N T H R O P, Chief Judge

¶1 Chad Edward Wilson ("Appellant") appeals his  
conviction and sentence for theft of a credit card or obtaining

a credit card by fraudulent means, a class five felony, in violation of Arizona Revised Statutes ("A.R.S.") section 13-2102 (West 2012).<sup>1</sup> Appellant's counsel has 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. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), stating that she has searched the record on appeal and found no arguable question of law that is not frivolous. Appellant's counsel therefore requests that we review the record for fundamental error. See *State v. Clark*, 196 Ariz. 530, 537, ¶ 30, 2 P.3d 89, 96 (App. 1999) (stating that this court reviews the entire record for reversible error). Although this court granted Appellant the opportunity to file a supplemental brief *in propria persona*, he has not done so.

¶2 We have appellate jurisdiction pursuant to the Arizona Constitution, Article 6, Section 9, and A.R.S. §§ 12-120.21(A)(1), 13-4031, and 13-4033(A). Finding no reversible error, we affirm Appellant's conviction and sentence, as modified to reflect credit for one additional day of presentence incarceration.

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<sup>1</sup> We cite the current Westlaw version of the applicable statutes because no revisions material to this decision have since occurred.

## I. FACTS AND PROCEDURAL HISTORY<sup>2</sup>

¶3 On April 9, 2010, a grand jury issued an indictment, charging Appellant with one count of theft of a credit card or obtaining a credit card by fraudulent means. The State later alleged that Appellant had five non-dangerous historical prior felony convictions. Appellant's first trial ended in a mistrial due to a hung jury.

¶4 Although he was warned that trial could proceed in his absence, Appellant did not attend his second trial. At Appellant's second trial, the State presented the following evidence: At approximately 12:00 p.m. on March 16, 2010, the victim drove to a restaurant in Buckeye to pick up lunch for her co-workers and herself. Because the food had been ordered by phone and prepaid, the victim left her purse, which held her wallet, on the front passenger seat of her car as she hurried in to pick up the food. She did not remember if she had locked her car doors, but she was only in the restaurant for a few minutes. When the victim returned to her car after getting the food, her purse was still on the front seat, and she returned to work.

¶5 At home that evening, the victim checked her bank account on-line, and noticed the account was overdrawn and

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<sup>2</sup> We review the facts in the light most favorable to sustaining the verdict and resolve all reasonable inferences against Appellant. See *State v. Kiper*, 181 Ariz. 62, 64, 887 P.2d 592, 594 (App. 1994).

reflected purchases she had not made. She asked her husband if he had made any purchases that day. He denied doing so and suggested that she check her wallet, in which she kept her Visa debit card for the account, as well as her social security card and numerous other credit and identification cards. She discovered, however, that her wallet was missing from her purse. The victim and her husband searched her car to see if she had dropped the wallet from her purse, but they did not find the wallet. The victim contacted the bank, and her husband went to the Buckeye police station to file a report.

¶6 The on-line bank account reflected four purchases or cash advances that were not authorized: Western Union for \$336.00, Mikey's Mini-Mart for \$26.70 and \$147.80, and Cricket Wireless for \$104.88. A police officer contacted personnel at Western Union, who provided the officer with Appellant's name as an investigative lead in connection with the transaction involving the victim's account. The next morning, the officer went to Mikey's Mini-Mart, where he obtained printed receipts that reflected the purchases recorded on the victim's on-line bank account. The time-stamp on the receipts indicated the transactions occurred at 4:21 and 4:34 p.m. on March 16, 2010.

¶7 A police detective constructed a photographic lineup that included Appellant's photo and showed it to the clerk who had been working at Mikey's Mini-Mart on March 16, 2010. The

clerk selected Appellant's photograph from the lineup as the person who had conducted the transactions involving the victim's debit card. The clerk stated that he remembered the transactions for several reasons, including: (1) he noticed Appellant's large size and skin color,<sup>3</sup> (2) Appellant had been a regular customer for the previous three years, (3) the clerk recognized Appellant's vehicle, (4) Appellant made two separate purchases with the card within a very short time, and (5) Appellant purchased an unusually large number of items, especially during the first purchase. The clerk also admitted he did not look at the name on the debit card used for the purchases because Appellant was a regular customer.

¶18 Approximately two weeks later, Buckeye police officers executed a search warrant at Appellant's residence. The officers did not find the victim's Visa debit card, but they found her social security card, social security cards belonging to four other persons, and a Cricket Wireless bill. Officers arrested Appellant and transported him to the police station, where he was advised of his rights pursuant to *Miranda*.<sup>4</sup> Appellant agreed to speak to the police detective, and admitted he had used the victim's debit card. Neither the victim nor her

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<sup>3</sup> The record reflects that Appellant, who is Black, stands between 6'3" and 6'5" tall and weighs approximately 330 to 345 pounds.

<sup>4</sup> See *Miranda v. Arizona*, 384 U.S. 436 (1966).

husband knew Appellant, and neither of them had given him permission to use the victim's card.

¶9 The jury found Appellant guilty as charged. At sentencing, Appellant admitted he had at least two prior felony convictions, and the trial court sentenced him to a presumptive term of five years' imprisonment in the Arizona Department of Corrections, with credit for ninety-six days of pre-sentence incarceration.<sup>5</sup> Appellant filed a timely notice of appeal.

## II. ANALYSIS

¶10 We have reviewed the entire record for reversible error and find none. See *Leon*, 104 Ariz. at 300, 451 P.2d at 881; *Clark*, 196 Ariz. at 537, ¶ 30, 2 P.3d at 96. The evidence presented at trial was substantial and supports the verdict, and the sentence was within the statutory limits. Appellant was represented by counsel at all stages of the proceedings and was given the opportunity to speak at sentencing. The proceedings

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<sup>5</sup> The record reflects that Appellant was booked into custody on April 1, 2010, and released on April 2, 2010, after bond was posted for his release. On June 15, 2011, he was again booked into custody, but was mistakenly released on his own recognizance that same day. On July 16, 2011, he was again booked into custody, where he remained until he was sentenced on October 18, 2011. Thus, Appellant was incarcerated for ninety-seven days before the day of sentencing, and he should be credited for one additional day of presentence incarceration. When we find a miscalculation in credit, we may correct the error by modifying the sentence without remanding to the trial court. See *State v. Stevens*, 173 Ariz. 494, 496, 844 P.2d 661, 663 (App. 1992). Accordingly, we modify Appellant's sentence to reflect one additional day of presentence incarceration credit.

were conducted in compliance with his constitutional and statutory rights and the Arizona Rules of Criminal Procedure.

¶11 After filing of this decision, defense counsel's obligations pertaining to Appellant's representation in this appeal have ended. Counsel need do no more than inform Appellant of the status of the appeal and of his future options, unless counsel's review reveals an issue appropriate for petition for review to the Arizona Supreme Court. See *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984). Appellant has thirty days from the date of this decision to proceed, if he desires, with a *pro per* motion for reconsideration or petition for review.

### III. CONCLUSION

¶12 Appellant's conviction and sentence are affirmed, as modified to reflect credit for one additional day of presentence incarceration.

\_\_\_\_\_/S/\_\_\_\_\_  
LAWRENCE F. WINTHROP, Chief Judge

CONCURRING:

\_\_\_\_\_/S/\_\_\_\_\_  
PHILIP HALL, Judge

\_\_\_\_\_/S/\_\_\_\_\_  
RANDALL M. HOWE, Judge