

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: 08/07/2012
RUTH A. WILLINGHAM,
CLERK
BY: sls

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) 1 CA-CR 11-0845
)
Appellee,) DEPARTMENT B
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
RUDY LOZOYA, JR.,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
)
)

Appeal from the Superior Court of Maricopa County

Cause No. CR2010-155596-001

The Honorable William L. Brotherton Jr., Judge

AFFIRMED

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

James J. Haas, Maricopa County Public Defender Phoenix
By Christopher V. Johns, Deputy Public Defender
Attorneys for Appellant

T H O M P S O N, Judge

¶1 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). Counsel for Rudy Lozoya, Jr. (defendant) has advised us that, after searching the entire record, he has been unable to discover any arguable questions of law and has filed a brief requesting that this court conduct an *Anders* review of the record. Defendant has been afforded an opportunity to file a supplemental brief *in propria persona*, and he has not done so.

¶2 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 review the facts in the light most favorable to sustaining the conviction and resolve all reasonable inferences against defendant. *State v. Guerra*, 161 Ariz. 289, 293, 778 P.2d 1185, 1189 (1989). Finding no reversible error, we affirm.

¶3 On October 15, 2010, a fight broke out at the Arizona State Fair. A group of men wearing all black were chasing and hitting an individual. One innocent bystander attempted to break up the fight by spraying mace at the participants. A state fair worker alerted police of the altercation and identified the men involved in the fight. Police began pursuing one of the men, defendant, on foot, and yelled commands that they were police and that he needed to stop. During the chase, defendant looked back at the officers but continued to run. After roughly seventy-five yards, one of the officers was able

to catch defendant and place him in a control hold. Defendant struggled to get free of the control hold, and the officer ended up taking defendant to the ground. While on the ground, defendant thrashed his legs and kept his arms stiff and hidden under his body while officers were ordering him to place his hands behind his back. To gain control of the situation, two officers held defendant's legs while a third attempted to secure his arms. After a sixty second struggle between the three officers and defendant, a fourth officer tasered defendant. At this point, police were able to place him under arrest and take him back to their command post. Defendant waived his *Miranda* rights and told police that one of his friends was fighting and "he jumped in to get his back." Defendant also told police that he was running from them because he didn't realize they were police officers and he just "wanted to get away" from the area.

¶4 At trial, defendant testified that he did not know how the fight started, and that once he noticed one of his friends was involved, he tried to be a good civilian and stop the fight. Defendant stated that while he was attempting to break up the fight he was exposed to the mace that had been sprayed. Defendant further stated that the mace made it difficult for him to see. Defendant claimed that he had not heard any commands from police because the fair rides were playing loud music, and that once he recognized it was police officers that were chasing

him he tried to comply but was unable to because the officers threw him to the ground. Defendant stated that he did not try to hide his arms but that he couldn't take them out from under his body because the officers were on top of him.

¶15 Defendant was charged with one count of resisting arrest, a class 6 felony, and one count of disorderly conduct, a class 1 misdemeanor. A jury convicted defendant on the count of resisting arrest and acquitted him on the count of disorderly conduct. The trial court designated the resisting arrest charge as a class 1 misdemeanor and sentenced defendant to a year of supervised probation. As part of the terms and conditions of his probation, defendant was given a sentence of four months in jail without any presentence incarceration credit.

¶16 We have read counsel's brief and have searched the entire record for reversible error and find none. *See Leon*, 104 Ariz. at 300, 451 P.2d at 881. All of the proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure. So far as the record reveals, defendant was adequately represented by counsel at all stages of the proceedings, and the sentence imposed was within the statutory limits.

¶17 Upon the filing of this decision, counsel shall inform defendant of the status of the appeal and his options. Counsel's duty to further defendant's cause on direct appeal is

satisfied and counsel has no further obligations unless, upon review, counsel finds an issue appropriate for submission to the Arizona Supreme Court by petition for review. See *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984). Defendant has thirty days from the date of this decision in which to proceed, if he so desires, with an *in propria persona* motion for reconsideration or petition for review.

¶8 We affirm defendant's conviction and sentence.

/s/

JON W. THOMPSON, Judge

CONCURRING:

/s/

PATRICIA A. OROZCO, Presiding Judge

/s/

SAMUEL A. THUMMA, Judge