

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: 10/23/2012  
RUTH A. WILLINGHAM,  
CLERK  
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IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

STATE OF ARIZONA, )  
 ) No. 1 CA-CR 11-0888  
 )  
 Appellee, ) DEPARTMENT C  
 )  
 v. ) MEMORANDUM DECISION  
 )  
 BRIAN RICHARD DELGADO, ) (Not for Publication -  
 ) Rule 111, Rules of the  
 Appellant. ) Arizona Supreme Court)  
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 )  
 )

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Appeal from the Superior Court in Maricopa County

Cause No. CR2011-114552-001 DT

The Honorable William Brotherton, Judge

**AFFIRMED**

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Thomas C. Horne, Arizona 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 Paul J. Prato, Deputy Public Defender  
Attorneys for Appellant

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H A L L, Judge

¶1 Brian Richard Delgado (defendant) appeals from his conviction and the sentence imposed. For the reasons set forth below, we affirm.

¶2 Defendant's appellate counsel filed a brief in accordance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), advising that, after a diligent search of the record, he was unable to find any arguable grounds for reversal. This court granted defendant an opportunity to file a supplemental brief, which he has not done. See *State v. Clark*, 196 Ariz. 530, 537, ¶ 30, 2 P.3d 89, 96 (App. 1999).

¶3 We review for fundamental error, error that goes to the foundation of a case or takes from the defendant a right essential to his defense. See *State v. King*, 158 Ariz. 419, 424, 763 P.2d 239, 244 (1988). We view the evidence presented at trial in a light most favorable to sustaining the verdict. *State v. Cropper*, 205 Ariz. 181, 182, ¶ 2, 68 P.3d 407, 408 (2003).

¶4 On March 30, 2011, defendant was charged by information with one count of sale or transportation of dangerous drugs, a class two felony.

¶5 The following evidence was presented at trial. On the afternoon of May 7, 2010, while acting in an undercover capacity, Detective Rafael Egea was driving an unmarked vehicle

in the area of 21st Avenue and Glenrosa in Phoenix; Detective John Justis was a passenger. After observing defendant standing by a "5th wheel or an abandoned trailer," Detective Egea drove the vehicle near defendant and parked. Defendant approached the vehicle on the driver's side and asked "what [are you] looking for?" Detective Egea responded that he "was looking for a Little G." Defendant removed three small bags from his pants pocket that contained an "off-white crystallized substance" and Detective Egea paid defendant \$60 for the baggies. The officer testified that the transaction took "no more than 30 seconds."

¶16 During their brief exchange, defendant had introduced himself to Detective Egea as "Shorty." Detective Egea ran the nickname Shorty through the police database and reviewed numerous photographs before he came across defendant's picture. At trial, Detective Justis also identified defendant as the individual who sold them the drugs.

¶17 Donald Stenberg of the Phoenix Crime Lab testified that the substance in the three baggies was 430 milligrams of methamphetamine.

¶18 After a two-day trial, the jury found defendant guilty as charged. After a trial on defendant's alleged historical prior felony convictions, the court found defendant had two prior felony convictions and sentenced him to a mitigated term of ten and one-half years imprisonment.

¶9 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 none. All of the proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure. Defendant was given an opportunity to speak before sentencing, and the sentence imposed was within statutory limits. Furthermore, based on our review of the record, there was sufficient evidence for the jury to find that defendant committed the offense for which he was convicted.

¶10 After the filing of this decision, counsel's obligations pertaining to defendant's representation in this appeal have ended. Counsel need do no more than inform defendant of the status of the appeal and his future options, unless counsel's review reveals 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 to proceed, if he desires, with a pro per motion for reconsideration or petition for review. Accordingly, defendant's conviction and sentence are affirmed.

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PHILIP HALL, Presiding Judge

CONCURRING:

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\_ / s / \_\_\_\_\_  
PETER B. SWANN, Judge

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\_ / s / \_\_\_\_\_  
SAMUEL A. THUMMA, Judge