DIVISION ONE
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RUTH A. WILLINGHAM, CLERK
BY: sls

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,	)	No. 1 CA-CR 12-0156
	)	
Appellee,	)	DEPARTMENT D
	)	
v.	)	**MEMORANDUM DECISION**
	)	(Not for Publication -
TREVONE DEBRAE TAYLOR,	)	Rule 111, Rules of the
	)	Arizona Supreme Court)
Appellant.	)	
	)	

Appeal from the Superior Court in Maricopa County

Cause No. CR2008-152607-001

The Honorable Michael W. Kemp, Judge

AFFIRMED

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

Bruce F. Peterson, Maricopa County Legal Advocate — Phoenix
By Thomas J. Dennis, Deputy Legal Advocate
Attorneys for Appellant

S W A N N, Judge

¶1 Defendant Trevone Debrae Taylor appeals from his resentencing for burglary in the first degree. 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 nonfrivolous 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 has filed a supplemental brief *in propria persona*.

¶2 We have reviewed the record, and we find no fundamental error. We therefore affirm.

FACTS AND PROCEDURAL HISTORY

¶3 In July 2009, a jury convicted Defendant of one count of aggravated assault (Count 1) and two counts of burglary in the first degree (Counts 2 and 3). The jury found at least one aggravating circumstance for each count, and found that Counts 1 and 2 were dangerous offenses. The superior court entered judgment on the verdicts and sentenced Defendant to prison terms of twelve years on Count 1, seven years on Count 2, and four years on Count 3, with the sentences on Counts 2 and 3 to run concurrently and the sentence on Count 1 to run consecutively. The court credited Defendant for his presentence incarceration on both Count 1 and Count 3.

¶4 Defendant appealed, and his case came to this court as an appeal under *Anders* and *Leon*. *State v. Taylor*, 1 CA-CR 10-0015, 2011 WL 2176526, at *1, ¶ 1 (Ariz. App. May 31, 2011)

(mem. decision). We affirmed the convictions and sentences on Counts 1 and 3, but vacated the finding of dangerousness on Count 2 because the prosecutor had incorrectly argued to the jury that Defendant's mere possession of a firearm at the time of the offense was equivalent to its "use" for sentencing enhancement purposes. *Id.* at *3-4, ¶¶ 14-19. We therefore vacated the sentence on Count 2 and remanded for resentencing on that count. *Id.* at *4, ¶¶ 18-19. We also noted that the court erred by awarding presentence incarceration credit on Count 3 where the credit had also been applied to the consecutive sentence on Count 1, but held that we could not correct that error because the state did not cross-appeal. *Id.* at *2, ¶ 10 & n.4.

¶5 Pursuant to our mandate, the superior court held a resentencing hearing on March 9, 2012. The court relied on the jury's finding of an aggravating circumstance with respect to Count 2 -- namely, that the offense involved financial harm to the victim -- to sentence Defendant to an aggravated prison term of seven years on Count 2. Defendant timely appeals. 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

¶6 We have already affirmed Defendant's convictions, and we have affirmed his sentences on Counts 1 and 3. *Taylor*, 1 CA-CR 10-0015, at *4, ¶ 19. The only issue that we may consider on this appeal is Defendant's resentencing on Count 2. Because none of Defendant's arguments in his supplemental brief relate to that issue, we do not address those arguments.[1]

¶7 Before imposing sentence on Count 2, the court heard arguments from counsel, gave Defendant an opportunity to speak, and reviewed Defendant's original presentence report. The court was not required to order a new presentence report. Ariz. R. Crim. P. 26.4(a) cmt. The court stated on the record the evidence and materials it considered and the factors it found in imposing sentence.

¶8 The court imposed a legal sentence on Count 2. Burglary in the first degree is a class two felony if (as here) it was committed in a residential structure. A.R.S. § 13-1508(B). The jury found that the offense caused financial harm to the victim, and the court lawfully relied on that finding to sentence Defendant to an aggravated prison sentence of seven years pursuant to A.R.S. §§ 13-701 and 13-702. The court's

[1] Defendant argues illegal search and seizure, incorrect jury instructions regarding aggravated assault, insufficient evidence regarding aggravated assault, "possible" impermissible ex parte communication by the prosecutor in connection with a change of judge, and an "unfair jury selecting pool."

denial of Defendant's request to make that sentence concurrent to the sentence on Count 1 was not error because the offense in Count 1 involved a different victim. *See State v. Hampton*, 213 Ariz. 167, 182, ¶ 65, 140 P.3d 950, 965 (2006). Further, the court's denial of Defendant's request to apply his presentence incarceration credit to the sentence on Count 2 was not error because the credit had already been applied to the consecutive sentence on Count 1. *See State v. Cuen*, 158 Ariz. 86, 87-88, 761 P.2d 160, 161-62 (App. 1988). The fact that the court previously made an uncorrectable error by applying the credit to the sentence on Count 3 did not justify repetition of that error with respect to the sentence on Count 2.

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 resentencing on Count 2.

¶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 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/
_____
PETER B. SWANN, Judge

CONCURRING:

/s/
_____
JOHN C. GEMMILL, Presiding Judge

/s/
_____
ANDREW W. GOULD, Judge