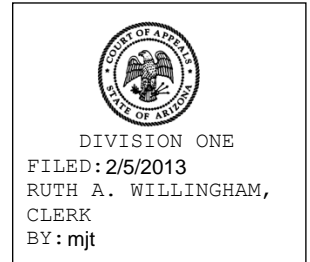


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



STATE OF ARIZONA,) 1 CA-CR 12-0176
)
Appellee,) DEPARTMENT S
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
ALFRED JOHN SHEPPARD,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2011-119604-002

The Honorable Susanna C. Pineda, Judge

AFFIRMED AS MODIFIED

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

W I N T H R O P, Chief Judge

¶1 Alfred John Sheppard ("Appellant") appeals his conviction and sentence for misconduct involving weapons. 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 he 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 Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1) (West 2012),¹ 13-4031, and 13-4033(A). Finding no reversible error, we affirm as modified herein.

I. FACTS AND PROCEDURAL HISTORY²

¶3 On April 26, 2011, a grand jury issued an indictment, charging Appellant with one count of misconduct involving weapons, a class four felony, in violation of A.R.S. § 13-3102.

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

² 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).

Before trial, the State alleged Appellant had five historical prior felony convictions. Additionally, the State and Appellant stipulated to Appellant's status as a prohibited possessor and that a valid search warrant was executed on the date of the alleged offense.

¶4 At trial, the State presented the following evidence: On April 19, 2011, the Phoenix Police Department's Special Assignments Unit executed a search warrant on Appellant's residence in Phoenix, Arizona. After knocking on the door and announcing their presence, officers breached the front door, entered, and located Appellant and his girlfriend in the master bedroom. Upon entering the room, the officers observed a shotgun leaning against a bedroom wall on Appellant's side of the bed.

¶5 After officers separated Appellant and his girlfriend, an officer placed Appellant in the backseat of a patrol car, advised him of his rights pursuant to *Miranda*,³ and questioned him. Appellant acknowledged his status as a prohibited possessor and claimed the shotgun belonged to his son. Nevertheless, he acknowledged that it was "unreasonable" for him to have the shotgun "not only inside of his residence, but inside his bedroom, and on his side of his bed."

³ See *Miranda v. Arizona*, 384 U.S. 436 (1966).

¶6 Appellant did not testify at trial. Appellant's girlfriend, however, testified that she had placed the shotgun in the bedroom on the morning of Appellant's arrest after obtaining it from a friend as collateral for a loan. She also testified that she had not provided this information to officers on the day of the arrest. The State offered rebuttal testimony from an officer who stated that on the day of Appellant's arrest, Appellant's girlfriend claimed she was unaware who owned the gun, but admitted the shotgun was kept in the bedroom and that Appellant had handled the shotgun before.

¶7 The jury found Appellant guilty as charged. Before sentencing, the trial court determined that Appellant had two historical prior felony convictions for sentence enhancement purposes. The court sentenced Appellant to a minimum term of eight years' imprisonment in the Arizona Department of Corrections, with credit for 114 days of presentence incarceration.⁴ Appellant filed a timely notice of appeal.

⁴ The trial court's March 5, 2012 minute entry indicates that Appellant was sentenced to more than the presumptive term for the sole count. The transcript of the sentencing proceeding and the actual sentence, however, make clear that the court sentenced Appellant to a minimum term. Accordingly, the court's minute entry should be modified to reflect that Appellant was sentenced to a minimum term for the sole count. See *State v. Stevens*, 173 Ariz. 494, 496, 844 P.2d 661, 663 (App. 1992).

II. ANALYSIS

¶8 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 sentencing proceedings followed the statutory requirements. Appellant was represented by counsel at all stages of the proceedings and was given the opportunity to speak at sentencing. The proceedings were conducted in compliance with his constitutional and statutory rights and the Arizona Rules of Criminal Procedure.

¶9 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

¶10 Appellant's conviction and sentence are affirmed. The sentencing minute entry is modified to reflect that the court sentenced Appellant to a minimum term of imprisonment.

_____/S/_____
LAWRENCE F. WINTHROP, Chief Judge

CONCURRING:

_____/S/_____
DIANE M. JOHNSEN, Judge

_____/S/_____
DONN KESSLER, Judge