

NOTICE: NOT FOR PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION DOES NOT CREATE
LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Appellee*,

v.

STEVE WAYNE DOWNEY, *Appellant*.

No. 1 CA-CR 13-0432

FILED 07-10-2014

Appeal from the Superior Court in Maricopa County

No. CR2012-122585-001

The Honorable Christine E. Mulleneaux, Judge

AFFIRMED AS MODIFIED

COUNSEL

Arizona Attorney General's Office, Phoenix

By Joseph T. Maziarz

Counsel for Appellee

Maricopa County Public Defender's Office, Phoenix

By Joel M. Glynn

Counsel for Appellant

MEMORANDUM DECISION

Judge John C. Gemmill delivered the decision of the Court, in which
Presiding Judge Samuel A. Thumma and Judge Randall M. Howe joined.

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G E M M I L L, Judge:

¶1 Steve Wayne Downey appeals his convictions and sentences for aggravated assault, a class 3 dangerous felony, and misconduct involving weapons, a class 4 felony. Downey’s counsel filed a brief in compliance with *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, found no arguable question of law, and requesting that this court examine the record for reversible error. Downey filed a *pro se* supplemental brief in which he asserts his innocence. See *State v. Clark*, 196 Ariz. 530, 537, ¶ 30, 2 P.3d 89, 96 (App. 1999) (describing the typical *Anders* appeal process). For the following reasons, we affirm Downey’s convictions and sentences but we modify his sentences to vacate the requirement that he pay the cost of testing his DNA.

Facts and Procedural History

¶2 “We view the facts and all reasonable inferences therefrom in the light most favorable to sustaining the convictions.” *State v. Powers*, 200 Ariz. 123, 124, ¶ 2, 23 P.3d 668, 669 (App. 2001).

¶3 At trial, the State presented evidence that on May 30, 2012, Curtis Robertson was shot in the knee. Deputy Jeff McClure of the Maricopa County Sheriff’s Office (“MCSO”) testified that he arrived on the scene to find three intoxicated individuals, one of whom had a gunshot wound in his leg. Deputy McClure testified that he was later alerted to the presence of the weapon, and a search of the property ultimately revealed a revolver hidden between two tires.

¶4 The revolver contained three spent cartridges, tending to support the 911 call that claimed three shots were fired. Amy Wilson, a crime lab analyst with MCSO, testified that fingerprints taken from the revolver matched Downey’s fingerprints.

¶5 The State also presented evidence from two witnesses that Downey told his co-workers he had shot his friend for disrespecting his wife. Downey testified on his own behalf and admitted that he was a convicted felon who had not had his civil rights restored and was therefore prohibited from owning a firearm.

¶6 Downey was found guilty by the jury of one count of aggravated assault, a class 3 dangerous felony, in violation of Arizona

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Revised Statutes (“A.R.S.”) sections 13-1203, -1204, -3105, -701, -702, -801 and -704, and a second count of misconduct involving weapons, a class 4 felony, in violation of A.R.S. §§ 13-3101, -3102, -3105, -701, -702, and -801. The jury also found that the aggravated assault was “dangerous.”¹ Downey was sentenced to a presumptive term of imprisonment of 7.5 years on count one and 2.5 years on count two, to be served concurrently, with 39 days of presentence incarceration credit. Downey timely appeals, and we have jurisdiction pursuant to A.R.S. §§ 13-4031, -4033, and 12-120.21(A)(1).

Discussion

¶7 Downey asserts his innocence, pointing out that the victim came to the sentencing hearing and told the court that Downey did not shoot him and was not even present when he was shot. It is clear from the transcript of the sentencing that the trial court considered the victim’s statements in determining Downey’s sentences. The jury had already found Downey guilty of having shot the victim, however, and the court recognized that Downey and the victim were close friends. We conclude that substantial and sufficient evidence in the record supports the jury’s verdicts here.

¶8 At sentencing, the superior court ordered Downey to “submit to DNA testing for law enforcement identification purposes and pay the applicable fee for the cost of that testing in accordance with A.R.S. § 13-610.” But because § 13-610 does not authorize the sentencing court to require the convicted person to pay for the DNA analysis, *see State v. Reyes*, 232 Ariz. 468, 472, ¶ 14, 307 P.3d 35, 39 (App. 2013), we vacate that portion of the sentencing order requiring Downey to do so.

¶9 Having considered defense counsel’s brief and Downey’s supplemental brief, and having examined the record for reversible error,

¹ The trial court’s sentencing minute entry describes the aggravated assault conviction as “non-dangerous.” The record is abundantly clear, however, that this conviction was found to be “dangerous” by the jury and the trial court sentenced Downey for a class 3 dangerous felony. In the opening brief, Downey concedes that he was convicted of and sentenced for a “dangerous” offense. The reference to the aggravated assault conviction as “non-dangerous” in the sentencing minute entry dated June 13, 2013, and filed June 17, 2013, shall be amended to “dangerous.”

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see Leon, 104 Ariz. at 300, 451 P.2d at 881, we find no reversible error. The evidence presented supports the conviction and the sentence imposed (as modified herein) falls within the range permitted by law. As far as the record reveals, Downey was represented by counsel at all stages of the proceedings, and these proceedings were conducted in compliance with his constitutional and statutory rights, and the Arizona Rules of Criminal Procedure.

¶10 Pursuant to *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984), counsel's obligations in this appeal have ended. Counsel need do no more than inform Downey of the disposition 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. Downey has thirty days from the date of this decision in which to proceed, if he desires, with a *pro se* motion for reconsideration or petition for review.

CONCLUSION

¶11 The convictions and sentences, as modified, are affirmed. We order the following modifications regarding Downey's sentences: (1) The reference to the aggravated assault conviction as "non-dangerous" in the sentencing minute entry order dated June 13, 2013, and filed June 17, 2013, is hereby amended to "dangerous"; and (2) we vacate the portion of the sentencing order requiring Downey to pay for the DNA analysis.



Ruth A. Willingham · Clerk of the Court
FILED: gsh