

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Appellee*,

v.

CHRISTOPHER JAMES LONG, *Appellant*.

No. 1 CA-CR 15-0742
FILED 6-29-2017

Appeal from the Superior Court in Maricopa County
No. CR2014-134713-001
The Honorable Peter C. Reinstein, Judge

AFFIRMED AS MODIFIED

COUNSEL

Arizona Attorney General's Office, Phoenix
By Joseph T. Maziarz
Counsel for Appellee

Law Office of Nicole Farnum, Phoenix
By Nicole T. Farnum
Counsel for Appellant

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MEMORANDUM DECISION

Judge Kenton D. Jones delivered the decision of the Court, in which Presiding Judge Samuel A. Thumma and Judge Maurice Portley¹ joined.

JONES, Judge:

¶1 Christopher Long appeals his convictions and sentences for one count of armed robbery and one count of aggravated assault. After searching the entire record, Long’s defense counsel has identified no arguable question of law that is not frivolous. Therefore, in accordance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297 (1969), defense counsel asks this Court to search the record for fundamental error. Long was afforded an opportunity to file a supplemental brief *in propria persona* but did not do so. After reviewing the record, we find no error with Long’s convictions; however, Long was not given full credit for his presentence incarceration. Accordingly, Long’s convictions are affirmed, and his sentences are modified.

FACTS² AND PROCEDURAL HISTORY

¶2 At approximately 2 p.m. on July 18, 2014, the victim, J.S., arrived at his smoke shop/dollar store located at 1315 West McDowell in Phoenix. He was relocating items from his daughter’s store to the above location, so the store was not yet open to the public. J.S. unlocked the door and entered, at which time a man, later identified as Long, followed behind and walked into the shop as well.

¶3 Long asked J.S. for a blunt wrap, an item used to “wrap around tobacco to smoke,” but J.S. responded that the store was not yet open. Long told him he was “waiting for [J.S.]” and asked “where ha[d]

¹ The Honorable Maurice Portley, Retired Judge of the Court of Appeals, Division One, has been authorized to sit in this matter pursuant to Article 6, Section 3, of the Arizona Constitution.

² “We view the facts in the light most favorable to sustaining the convictions with all reasonable inferences resolved against the defendant.” *State v. Harm*, 236 Ariz. 402, 404 n.2, ¶ 2 (App. 2015) (quoting *State v. Valencia*, 186 Ariz. 493, 495 (App. 1996)).

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[J.S.] been.” While reaching for a blunt wrap to give to Long, J.S. turned away from the counter. When he turned back around, Long was standing behind the counter area “right in front of [J.S.’s] face.”

¶4 Long then pointed a handgun at J.S., said he was going “to shoot [J.S.],” and directed J.S. to lay on the ground. Long also demanded J.S. open the store’s cash register; while doing so, Long had “his hand on [J.S.’s] neck and his gun was on [J.S.’s] head.” J.S. gave Long the small amount of money kept in the register of the unopened store, which made Long angrier. After J.S. gave Long what was in the register, he also gave Long his wallet, which Long threw on the floor.

¶5 Fearing he was going to be shot, J.S. unsuccessfully tried to reach out and grab Long’s gun. During the struggle, Long shot J.S. in his right shoulder. Eventually, Long fled the store. A local resident observed Long “running down th[e] [side]walk . . . [and] start[ing] waving to a car.” The resident saw Long get into the car and wrote down the car’s license plate number. Phoenix police conducted a records’ check on the license plate number and were eventually able to locate and detain Long. Subsequent forensic testing revealed Long had particles associated with gunshot residue on his hands.

¶6 After an eight-day trial, the jury convicted Long of armed robbery and aggravated assault. At a separate trial on aggravating factors, Long’s probation officer testified Long had been on probation since January 2013. The jury found aggravating factors for both counts, specifically that: (1) Long committed the offenses while on probation; (2) the offenses caused physical harm to the victim; and (3) the offenses were dangerous pursuant to Arizona Revised Statutes (A.R.S.) section 13-105(13).³

¶7 At sentencing, Long admitted to one historical prior felony conviction for armed robbery, a class 2 dangerous felony. The trial court sentenced Long as a dangerous, repetitive offender to a slightly aggravated term of 16 years’ imprisonment for armed robbery and 12 years’ imprisonment for aggravated assault, with the sentences running concurrently. Long was also given credit for 454 days of presentence incarceration. Long timely appealed, and this Court has jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1), 13-4031, and -4033(A)(1).

³ Absent material changes from the relevant date, we cite a statute’s current version.

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DISCUSSION

¶8 A defendant is entitled to credit for “[a]ll time actually spent in custody pursuant to an offense until the prisoner is sentenced to imprisonment for such offense.” A.R.S. § 13-712(B). Failure to award full credit for presentence incarceration constitutes fundamental error. *State v. Cofield*, 210 Ariz. 84, 86, ¶ 10 (App. 2005) (citing *State v. Ritch*, 160 Ariz. 495, 498 (App. 1989)).

¶9 The record reflects Long was arrested and taken into custody on July 18, 2014. After he was convicted, Long’s sentencing was originally set for October 16, 2015 but ultimately did not occur until October 22, 2015. Therefore, Long was incarcerated for 461 days prior to the date of sentencing. However, Long was credited with only 454 days of presentence incarceration. This Court has the authority to modify a sentence to reflect the correct amount of presentence incarceration credit. *State v. Long*, 207 Ariz. 140, 148 n.6, ¶ 42 (App. 2004) (citing A.R.S. § 13-4037(B)); *see also* Ariz. R. Crim. P. 31.17(b). Accordingly, Long’s sentences are modified to reflect credit for 461 total days of presentence incarceration.

¶10 Further review reveals no fundamental error. *See Leon*, 104 Ariz. at 300 (“An exhaustive search of the record has failed to produce any prejudicial error.”). A person is guilty of armed robbery if, while armed with a deadly weapon “in the course of taking any property of another from his person or immediate presence and against his will, such person threatens or uses force against any person with intent either to coerce surrender of property or to prevent resistance to such person taking or retaining property.” A.R.S. §§ 13-1902(A), -1904(A)(1). “[A]ny loaded or unloaded handgun, pistol, revolver, rifle, [or] shotgun” is a deadly weapon. A.R.S. § 13-105(15), (19). Here, the record definitively shows Long, while armed with a handgun, attempted to take money from J.S. by physically grabbing and eventually shooting J.S. Furthermore, a person commits aggravated assault by “[i]ntentionally, knowingly or recklessly causing any physical injury to another person” while using “a deadly weapon or dangerous instrument.” A.R.S. §§ 13-1203(A)(1), -1204(A)(2). “‘Physical injury’ means the impairment of physical condition.” A.R.S. § 13-105(33). Based upon the record before us, sufficient evidence was presented upon which a jury could determine beyond a reasonable doubt Long was guilty of both armed robbery and aggravated assault. Additionally, sufficient evidence was presented upon which the jury could conclude, beyond a reasonable doubt, the offense was dangerous, Long was on probation for a felony conviction at the time of the offense, and Long caused the victim physical injury. *See* A.R.S. § 13-701(C), (D)(2), (9), (11).

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¶11 All the proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure. So far as the record reveals, Long was represented by counsel at all stages and was present at all critical stages of the proceedings, including the entire trial and the verdict, except for a brief portion during deliberations where his presence was knowingly and voluntarily waived. *See, e.g., State v. Conner*, 163 Ariz. 97, 104 (1990) (right to counsel) (citations omitted); *State v. Bohn*, 116 Ariz. 500, 503 (1977) (right to be present). The jury was properly comprised of twelve jurors, and the record shows no evidence of jury misconduct. *See* Ariz. Const. art. 2, § 23; A.R.S. § 21-102(A); Ariz. R. Crim. P. 18.1(a). At sentencing, Long was given an opportunity to speak, and the trial court stated on the record the evidence and materials it considered and the factors it found in imposing the sentence. *See* Ariz. R. Crim. P. 26.9, 26.10. Additionally, other than the aforementioned error, the sentences imposed were within the statutory limits. *See* A.R.S. §§ 13-701(C), -704(D), -708(A), -1204(D), -1904(B).

CONCLUSION

¶12 Long's convictions are affirmed. His sentences are modified to reflect presentence incarceration credit of 461 days for each count.

¶13 Defense counsel's obligations pertaining to Long's representation in this appeal have ended. Defense counsel need do no more than inform Long of the outcome of this appeal and his future options, unless, upon review, counsel finds an issue appropriate for submission to our supreme court by petition for review. *State v. Shattuck*, 140 Ariz. 582, 584-85 (1984).

¶14 Long has thirty days from the date of this decision to proceed, if he wishes, with an *in propria persona* petition for review. *See* Ariz. R. Crim. P. 31.19(a). Upon the Court's own motion, we also grant Long thirty days from the date of this decision to file an *in propria persona* motion for reconsideration.



AMY M. WOOD • Clerk of the Court
FILED: AA