

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  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

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STATE OF ARIZONA, *Appellee*,

*v.*

CHRISTOPHER SHANNON ELLINGTON, *Appellant*.<sup>1</sup>

No. 1 CA-CR 16-0555

FILED 8-29-2017

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Appeal from the Superior Court in Maricopa County  
No. CR2015-006009-001  
The Honorable Richard L. Nothwehr, Judge *Pro Tempore*

**AFFIRMED**

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COUNSEL

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

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<sup>1</sup> On the court's own motion, it is ordered amending the caption in this appeal as reflected in this decision. The above referenced caption shall be used on all further documents filed in this appeal.

Maricopa County Public Defender's Office, Phoenix  
By Joel M. Glynn  
*Counsel for Appellant*

Christopher Ellington, San Luis  
*Appellant*

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**MEMORANDUM DECISION**

Presiding Judge Kent E. Cattani delivered the decision of the Court, in which Judge Jon W. Thompson and Judge Paul J. McMurdie joined.

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**C A T T A N I**, Judge:

¶1 Christopher Shannon Ellington appeals his conviction and sentence for possession of a dangerous drug. Ellington's counsel filed a brief in accordance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297 (1969), certifying that, after a diligent search of the record, he found no arguable question of law that was not frivolous. Ellington was given the opportunity to file a supplemental brief, and raised the following issues: (1) whether his appellate counsel has a conflict of interest requiring appointment of new counsel and (2) whether this appeal should be stayed pending the outcome of *State v. Ellington*, 1 CA-CR 17-0081, an appeal involving a different defendant with the same name. Counsel asks this court to search the record for reversible error. *See State v. Clark*, 196 Ariz. 530, 537, ¶ 30 (App. 1999). After reviewing the record and considering the issues raised in the supplemental brief, we affirm Ellington's conviction and sentence.

**FACTS AND PROCEDURAL BACKGROUND**

¶2 In October 2015, Avondale police officers responded to a welfare check and found Ellington asleep on a mattress behind a grocery store. The officers woke Ellington and asked if he had any weapons. Ellington indicated that he had a knife in his left front pocket. One of the officers reached into Ellington's pocket to remove the knife and discovered an uncapped syringe.

¶3 The officers ran a records check and discovered that Ellington had an outstanding warrant. They arrested him and conducted a search incident to arrest, which revealed a plastic wrapper containing a white

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crystalline substance. Laboratory testing confirmed the substance was methamphetamine.

¶4 Ellington was charged with possession of a dangerous drug (methamphetamine), a class 4 felony, and possession of drug paraphernalia, a class 6 felony. See Ariz. Rev. Stat. (“A.R.S.”) §§ 13-3407(A)(1), (B)(1), -3401(6)(c)(xxxviii); A.R.S. § 13-3415(A).<sup>2</sup> A jury convicted Ellington of possession of a dangerous drug, but acquitted him of possession of drug paraphernalia. After an aggravation hearing, the jury also found that Ellington was on parole or community supervision for two previous felonies at the time of his arrest. At the sentencing hearing, the court found that Ellington had two prior felonies and sentenced him to the presumptive term of 10 years’ imprisonment. Ellington timely appealed.

**DISCUSSION**

¶5 We have read and considered counsel’s brief and have reviewed the record for reversible error. See *Leon*, 104 Ariz. at 300. We find none.

¶6 In his supplemental brief, Ellington asks us to stay his appeal pending the outcome in *State v. Ellington*, 1 CA-CR 17-0081. Ellington has apparently received correspondence from this court regarding that appeal. But this correspondence was apparently sent in error. The other appeal was brought by a different Christopher Ellington (as evidenced by the difference in middle names and birth dates between the two men). The two appeals are unrelated, and there is no reason for us to stay this appeal.

¶7 Ellington argues that he is entitled to new appellate counsel because his appointed counsel works for the Maricopa County Public Defender’s Office, the same office as his trial counsel. Ellington would be entitled to new counsel if this were a petition for post-conviction relief alleging that his trial counsel had been ineffective. See *State v. Rosales*, 205 Ariz. 86, 89 & n.2, ¶ 9 (App. 2003). However, absent a specific conflict of interest, there is nothing inappropriate about two members of the same office representing a defendant at trial and on direct appeal. This situation raises no appearance of impropriety, because appellate counsel has a duty to search the record for errors committed by the State and by the court, not by trial counsel. Ellington has not offered any evidence tending to prove the existence of a conflict of interest, and his claim thus fails.

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<sup>2</sup> Absent material revisions after the relevant date, we cite a statute’s current version.

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¶8 Ellington was present (or, on one occasion, his presence waived) and represented by counsel at all stages of the proceedings against him. The record reflects that the superior court afforded Ellington all his constitutional and statutory rights, and that the proceedings were conducted in accordance with the Arizona Rules of Criminal Procedure. The court conducted appropriate pretrial hearings, and the evidence presented at trial was sufficient to support the jury's verdict. Ellington's sentence falls within the range prescribed by law, with appropriate credit given for presentence incarceration.

CONCLUSION

¶9 Ellington's conviction and sentence are affirmed. After the filing of this decision, defense counsel's obligations pertaining to Ellington's representation in this appeal will end after informing Ellington of the outcome of this 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 (1984). On the court's own motion, Ellington has 30 days from the date of this decision to proceed, if he desires, with a *pro se* motion for reconsideration or petition for review.



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