

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

WAYNE TORBEN SCHRADER, *Appellant*.

No. 1 CA-CR 16-0681
FILED 9-12-2017

Appeal from the Superior Court in Yavapai County
No. V1300CR201580266
The Honorable Michael R. Bluff, Judge

AFFIRMED

COUNSEL

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

Craig Williams, Attorney at Law PLLC, Prescott Valley
By Craig Williams
Counsel for Appellant

MEMORANDUM DECISION

Presiding Judge Peter B. Swann delivered the decision of the court, in which Judge Kent E. Cattani and Chief Judge Samuel A. Thumma joined.

S W A N N, Judge:

¶1 This is an appeal under *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297 (1969), from Wayne Torben Schrade's convictions, probation revocation, and sentences. Schrade was given the opportunity to file a supplemental brief *in propria persona*, but he did not do so. We have reviewed the record for fundamental error. *See Smith v. Robbins*, 528 U.S. 259 (2000); *Anders*, 386 U.S. 738; *State v. Clark*, 196 Ariz. 530, 537, ¶ 30 (App. 1999). We find none.

¶2 In June 2015, Schrade was placed on supervised probation after pleading guilty to two class six felonies. Several months later, he was indicted for two new offenses: possession of a dangerous drug, and possession of drug paraphernalia. He pled not guilty, and the matter proceeded to a jury trial.

¶3 At trial, the state presented evidence of the following facts. Late in the evening on September 11, 2015, a police officer stopped a vehicle in Prescott after noticing that its license-plate lamp was not functioning. The officer approached the vehicle and saw a driver, Alkhalaf, and a front-seat passenger, Schrade. Alkhalaf was behaving normally, but Schrade was bent over and rummaging beneath his seat. The officer directed Schrade to show his hands. Schrade complied, but not immediately.

¶4 The officer discovered that Alkhalaf's driver's license was suspended. Accordingly, the officer directed Alkhalaf and Schrade to exit the vehicle. Alkhalaf immediately exited, but the officer had to repeat the command several times before Schrade obeyed. The officer informed Alkhalaf that the vehicle would be inventoried and towed. Alkhalaf did not object, but Schrade yelled, "No!" Schrade told the officer that they did not consent to a search, and he stated that he would sign a waiver of liability with respect to the property in the vehicle. The officer explained that state law required the inventory search, and he proceeded to conduct the search as Schrade, visibly agitated, watched. When the officer looked beneath the front passenger seat, he saw a clear glass pipe that contained a white

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substance. The pipe was consistent with the type of pipe commonly used to smoke methamphetamine, and testing later revealed that the substance in the pipe was a usable quantity of methamphetamine.

¶5 The foregoing evidence was sufficient to support Schrade's convictions. The officer lawfully stopped the vehicle in which Schrade was a passenger, and lawfully conducted an inventory search after discovering that the vehicle's driver had a suspended license. *See* A.R.S. §§ 28-925(C), -3511(A)(1)(a). The evidence regarding Schrade's position in the vehicle and his behavior was sufficient to establish that he knowingly possessed the glass pipe and methamphetamine that the officer discovered during the search. *See State v. Teagle*, 217 Ariz. 17, 27, ¶ 41 (App. 2007) ("Constructive possession can be established by showing that the accused exercised dominion and control over the drug itself, or the location in which the substance was found."). A person commits possession of a dangerous drug if he knowingly possesses methamphetamine, and he commits possession of drug paraphernalia if he possesses, with intent to use, drug paraphernalia to ingest, inhale, or otherwise introduce methamphetamine into the human body. A.R.S. §§ 13-3401(6)(c)(xxxviii), -3407(A)(1), -3415(A).

¶6 Schrade was present and represented at all critical stages, the jury was properly comprised and instructed, and there is no evidence of juror or prosecutor misconduct. The state presented evidence of Schrade's June 2015 convictions and probation, and the court properly found an automatic probation violation under Ariz. R. Crim. P. 27.8(e).

¶7 Schrade was permitted to speak at the sentencing hearing, and the court stated on the record the materials it considered and the factors it found in imposing sentence. The court lawfully sentenced Schrade to concurrent presumptive 1-year prison terms for each of the probation offenses, and 4.5- and 1.75-year prison terms for the new offenses. *See* A.R.S. §§ 13-702(D), -105(22)(c), -3407(B)(1), -3415(A). Further, the court properly credited Schrade for his presentence incarceration. *See* A.R.S. §§ 13-712(B), -903(F).

¶8 For the foregoing reasons, we affirm Schrade's convictions, probation revocation, and sentences. Defense counsel's obligations pertaining to this appeal have come to an end. *See State v. Shattuck*, 140 Ariz. 582, 584-85 (1984). Unless, upon review, counsel discovers an issue appropriate for petition for review to the Arizona Supreme Court, counsel must only inform Schrade of the status of this appeal and his future options. *Id.* Schrade has 30 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

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own motion, Schrade has 30 days from the date of this decision in which to file a motion for reconsideration.



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