

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

JOSEPH MANUEL GARCIA, *Appellant*.

No. 1 CA-CR 16-0708
FILED 3-22-2018

Appeal from the Superior Court in Maricopa County
No. CR2015-110544-001
The Honorable James R. Rummage, Judge *Pro Tempore*

AFFIRMED AS MODIFIED

COUNSEL

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

Mays Law Office PLLC, Phoenix
By Wendy L. Mays
Counsel for Appellant

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MEMORANDUM DECISION

Presiding Judge Randall M. Howe delivered the decision of the Court, in which Judge Peter B. Swann and Judge Maria Elena Cruz joined.

H O W E, Judge:

¶1 This appeal is filed in accordance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297 (1969). Counsel for Joseph Manuel Garcia has advised this Court that counsel found no arguable questions of law and asks us to search the record for fundamental error. Garcia was convicted of one count of unlawful flight, a class 5 felony, one count of endangerment causing substantial risk of imminent death, a class 6 felony, and two counts of endangerment causing substantial risk of physical injury, class 1 misdemeanors. Garcia was given an opportunity to file a supplemental brief in propria persona; he has not done so. After reviewing the record, we affirm Garcia’s convictions and sentences, but vacate the portion of the sentencing order requiring Garcia to pay the cost of DNA testing.

FACTS AND PROCEDURAL HISTORY

¶2 We view the facts in the light most favorable to sustaining the judgment and resolve all reasonable inferences against Garcia. *See State v. Fontes*, 195 Ariz. 229, 230 ¶ 2 (App. 1998). One night in March 2015, a Phoenix police officer observed Garcia’s car fail to yield at a stop sign. Before initiating a stop, the officer ran the car’s license plate and discovered that the license plate was suspended. The officer then turned on his overhead lights to initiate a traffic stop. Garcia did not pull over, prompting the officer to turn on his siren. At first, Garcia maintained his speed but soon started accelerating away from the officer. After several turns, the officer noticed Garcia’s car’s brake lights a few hundred yards ahead and a large amount of smoke and debris in the air.

¶3 As the officer got to Garcia’s car, he observed that the car had crashed into a fence. Garcia then got out of his car and ran away. As the officer radioed for assistance, he noticed that three other people were inside the car—two adults and one toddler. Another officer found Garcia sitting on a chair under a carport three or four blocks away and returned Garcia to

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where the accident had occurred. Garcia matched the description that the first officer initially put out.

¶4 The State charged Garcia with one count of Unlawful Flight from Law Enforcement Vehicle, and three counts of Endangerment causing substantial risk of imminent death—one for each passenger. After trial, the jury found Garcia guilty of unlawful flight, a class 5 felony, one count of Endangerment causing substantial risk of imminent death for the count related to the toddler passenger, a class 6 felony, and the lesser-included offense of Endangerment causing substantial risk of physical injury for the counts related to the two adult passengers, class 1 misdemeanors. The jury also found that the class 6 felony conviction, Endangerment causing substantial risk of imminent death, was a dangerous felony because the offense involved “the discharge, use or threatening exhibition of a motor vehicle, a deadly weapon or dangerous instrument.”

¶5 The trial court conducted the sentencing hearing in compliance with Garcia’s constitutional rights and Arizona Rule of Criminal Procedure 26. The court found Garcia’s substantial criminal history as an aggravating circumstance, and Garcia’s family support and his participation in services while incarcerated as mitigating circumstances. As such, the court sentenced Garcia to concurrent presumptive terms of 5 years’ imprisonment on the unlawful flight conviction and 3.75 years’ imprisonment on the endangerment causing substantial risk of imminent death conviction with 583 days’ presentence incarceration credit. The court also sentenced Garcia to concurrent terms of 180 days in jail on the two misdemeanor convictions with 180 days’ presentence incarceration credit. The court ordered that Garcia pay a \$20 probation assessment and \$1,495 in restitution to Phoenix Manor Garden Apartments for the damage to the fence from the car crash.¹ Garcia timely appealed.

DISCUSSION

¶6 We review Garcia’s convictions and sentences for fundamental error. *See State v. Flores*, 227 Ariz. 509, 512 ¶ 12 (App. 2011).

¹ The court also ordered that Garcia submit to a DNA test, and that “[p]ursuant to the terms set forth in the parties’ [p]lea [a]greement,” he pay all costs associated with the DNA test. We note, however, that Garcia did not plead guilty but instead exercised his right to a jury trial. As such, Garcia did not agree to pay the costs associated with the DNA test. We therefore vacate that portion of the trial court’s sentencing order. *See State v. Reyes*, 232 Ariz. 468, 472 ¶ 14 (App. 2013).

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Counsel for Garcia has advised this Court that after a diligent search of the entire record, counsel has found no arguable question of law. We have read and considered counsel's brief and fully reviewed the record for reversible error. *See Leon*, 104 Ariz. at 300. Aside from requiring Garcia to pay for DNA testing, we find no error. All of the proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure. So far as the record reveals, counsel represented Garcia at all stages of the proceedings, and the sentences imposed were within the statutory guidelines. We decline to order briefing and affirm Garcia's convictions and sentences, but vacate the portion of the sentencing order requiring Garcia to pay the cost of DNA testing.

¶7 Upon the filing of this decision, defense counsel shall inform Garcia of the status of the appeal and of his future options. Counsel has no further obligations unless, upon review, counsel finds an issue appropriate for submission to the Arizona Supreme Court by petition for review. *See State v. Shattuck*, 140 Ariz. 582, 584-85 (1984). Garcia shall have 30 days from the date of this decision to proceed, if he desires, with a pro per motion for reconsideration or petition for review.

CONCLUSION

¶8 For the foregoing reasons, we affirm Garcia's convictions and sentences, but vacate the portion of the sentencing order requiring Garcia to pay the cost of DNA testing.



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