

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

No. 1 CA-CR 16-0870
FILED 10-9-2018

Appeal from the Superior Court in Maricopa County
No. CR2015-125362-001
The Honorable Jose S. Padilla, Judge

AFFIRMED

COUNSEL

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

Michael J. Dew, Phoenix
Counsel for Appellant

MEMORANDUM DECISION

Chief Judge Samuel A. Thumma delivered the decision of the Court, in which Presiding Judge James P. Beene and Judge Kent E. Cattani joined.

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T H U M M A, Chief Judge:

¶1 This is an appeal under *Anders v. California*, 386 U.S. 738 (1967) and *State v. Leon*, 104 Ariz. 297 (1969). Counsel for appellant Joseph Michael Washington has advised the court that, after searching the entire record, he has found no arguable question of law and asks this court to conduct an *Anders* review of the record. Washington was given the opportunity to file a supplemental brief pro se but has not done so. This court has reviewed the record and has found no reversible error. Accordingly, Washington’s conviction and resulting sentence are affirmed.

FACTS AND PROCEDURAL HISTORY

¶2 In June 2015, Phoenix police officers responded to a call regarding a man hitting a woman in west Phoenix. When they arrived, the officers saw Washington arguing with a woman. As the officers approached, Washington crossed the street and ran into an apartment complex. One officer chased him and yelled for him to stop. Washington paused, dumped a red backpack he was carrying, and then ran into another apartment complex, jumped a wall and was detained by other officers. A search of the backpack found a 9-millimeter handgun wrapped in a bandana. A records search revealed that Washington was a convicted felon and not legally entitled to possess a handgun, meaning he was considered a prohibited possessor.

¶3 Washington was charged with misconduct involving weapons (knowingly possessing a handgun, a deadly weapon, while being a prohibited possessor), a Class 4 felony. *See* Ariz. Rev. Stat. § 13-3102(A)(4) (2018).¹ The State timely alleged Washington had prior historical felony convictions and requested a hearing on the use of Washington’s prior felony convictions if he testified at trial. *See* Ariz. R. Evid. 609. Washington’s attorney also asked that, if allowed at trial, evidence of the prior felony convictions be sanitized. The court granted the requests in part, ordering that, if Washington testified, the felony convictions would be sanitized. The State extended more than one plea offer to Washington, which after a proper colloquy with the court, he did not accept. *See State v. Donald*, 198 Ariz. 406, 413 ¶ 14 (App. 2000).

¶4 Washington filed a motion to suppress, arguing that the State did not have reasonable suspicion to stop him and search the backpack and

¹ Absent material revisions after the relevant dates, statutes and rules cited refer to the current version unless otherwise indicated.

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seeking to suppress evidence of the gun and his statements. After an evidentiary hearing, the superior court granted the motion in part, finding Washington's statements made while in the back seat of the patrol car were inadmissible. The court denied the motion to the extent it asserted that the officers improperly stopped him or improperly searched the backpack.

¶5 After pretrial disclosures, a five-day jury trial was held in October 2016. The State offered testimony from the officers who arrested Washington and seized the backpack, as well as an inmate telephone records unit specialist (for Washington's recorded jail calls, where he stated he used the gun a number of times) and other witnesses who testified to DNA and fingerprints that connected Washington with the gun. The State admitted various documents, including proper stipulations that Washington was a prohibited possessor and that the handgun found in the backpack was fully operable. After the State rested, Washington unsuccessfully moved for a judgment of acquittal, arguing there was "no substantial evidence to" show that he knew he was in possession of a firearm. Ariz. R. Crim. P. 20.

¶6 After being advised he had a right not to testify, Washington elected to testify. Washington testified that he received the backpack from the woman he was arguing with and that he did not know a gun was in the backpack. Washington originally denied making statements about the gun in his jail calls. After listening to a recording of the jail calls, however, he admitted saying that he used the gun a number of times and saying "I'm not worried about this little prohibited possessor thing." After the close of the evidence and closing argument, the court properly instructed the jury. The jury deliberated and found Washington guilty as charged, and each juror confirmed the verdict during polling.

¶7 After considering a presentence report, and hearing argument and from Washington directly, the court sentenced him to a less-than-presumptive term of eight years in prison, properly awarding him 555 days of pre-sentence incarceration credit. Washington timely appealed from his conviction and sentence. This court has jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1), 13-4031 and -4033(A)(1).

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DISCUSSION

¶8 The record shows that Washington was represented by counsel at all stages of the proceedings and counsel was present at all critical stages. The record includes Washington's written request for change of counsel. Although pending for a period of time, when brought to the attention of the superior court at a hearing, Washington withdrew that request. The record provided contains substantial evidence supporting Washington's conviction and resulting sentence. From the record, all proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure, and the sentences imposed were within statutory limits and permissible ranges.

CONCLUSION

¶9 This court has read and considered counsel's brief, and has searched the record provided for reversible error and has found none. *Leon*, 104 Ariz. at 300; *State v. Clark*, 196 Ariz. 530, 537 ¶ 30 (App. 1999). Accordingly, Washington's convictions and resulting sentences are affirmed.

¶10 Upon the filing of this decision, defense counsel is directed to inform Washington of the status of the appeal and of his future options. Defense counsel has no further obligations unless, upon review, counsel identifies an issue appropriate for submission to the Arizona Supreme Court by petition for review. *See State v. Shattuck*, 140 Ariz. 582, 584-85 (1984). Washington shall have 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