IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Appellee*,

v.

ALTON LARRY SECAKUYVA, *Appellant*.

No. 1 CA-CR 17-0632
FILED 8-21-2018

Appeal from the Superior Court in Navajo County
No. S0900CR201600049
The Honorable Richard E. Hatch, Judge

AFFIRMED AS MODIFIED

COUNSEL

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

Emery K. La Barge, Attorney at Law, Snowflake
By Emery K. La Barge
Counsel for Appellant

MEMORANDUM DECISION

Judge Kent E. Cattani delivered the decision of the Court, in which Presiding Judge Diane M. Johnsen and Judge Jennifer M. Perkins joined.

C A T T A N I, Judge:

¶1 Alton Larry Secakuyva appeals his conviction of two counts of sexual conduct with a minor under the age of twelve and the resulting sentences. Secakuyva'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, she found no arguable question of law that was not frivolous. Secakuyva was given the opportunity to file a supplemental brief, but did not do so. 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, we modify his sentence on count 1 to include 419 days of presentence incarceration credit. We affirm his convictions and sentences in all other respects.

FACTS AND PROCEDURAL BACKGROUND

¶2 Secakuyva lived with the victim, M.P., and her family on the Navajo reservation. Secakuyva was M.P.'s mother's long-term boyfriend and became a father-figure to M.P. On December 23, 2015, when M.P. was nine years old, Secakuyva, M.P.'s mother, M.P., and three siblings stayed at a motel in Winslow. When M.P.'s mother went to the store, Secakuyva put M.P. on the bed, pulled down her pants, and had both anal and vaginal intercourse with her. Secakuyva threatened to hit M.P. if she told anyone what he had done.

¶3 Within the next few days, M.P. told her grandmother that Secakuyva had "hurt her down in her private." M.P.'s grandmother immediately called the police. Subsequent investigation and testing revealed male DNA consistent with Secakuyva's on M.P.'s underwear.

¶4 Secakuyva was arrested and charged with two counts of sexual conduct with a minor, class 2 felonies and dangerous crimes against

children.[1] At trial, the court admitted other acts evidence, and M.P. both described the incident underlying the charged offenses and further testified that Secakuyva had sexually abused her on numerous previous occasions when her mother was out of the house. *See* Ariz. R. Evid. 404(c). In contrast, Secakuyva testified that he never had sexual contact with M.P. and that M.P. had not even been staying with them at the motel (except for a 30-minute visit) around the time of the alleged offenses. M.P.'s mother testified to the same effect.

¶5 The jury found Secakuyva guilty of both counts of sexual conduct with a minor under the age of twelve. The court sentenced Secakuyva to two consecutive terms of life imprisonment without the possibility of release for 35 years, and Secakuyva timely appealed.

DISCUSSION

¶6 We have read and considered counsel's brief and have reviewed the record for reversible error. *See Leon*, 104 Ariz. at 300. With the exception of the court's failure to award presentence incarceration credit as described below, we find none.

¶7 Secakuyva was present and represented by counsel at all stages of the proceedings against him. The record reflects that the superior court afforded Secakuyva 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 verdicts. Secakuyva's sentences fall within the range prescribed by law.

¶8 Even though Secakuyva was held in custody for a period before sentencing, the superior court did not award him any presentence incarceration credit. Failure to award full credit for time served constitutes fundamental error. *See State v. Cofield*, 210 Ariz. 84, 86, ¶ 10 (App. 2005).

¶9 As a general matter, all time in custody must be credited against the term of imprisonment required by law. *See* A.R.S. § 13-712(B). Although credit for time served prior to a natural life sentence is not required because there is no chance of release on any basis, *see State v. Palmer*, 219 Ariz. 451, 453, ¶ 7 (App. 2008), here, Secakuyva was sentenced to life without the possibility of release for 35 years on both counts. Because

[1] The State also charged Secakuyva with three other sexual offenses, but the court later dismissed those charges without prejudice on the State's motion.

Secakuyva becomes eligible for (although not guaranteed) release after serving a determinate period of years (35 years, twice over), he should have received credit for time served against that period. *See State v. Thomas*, 133 Ariz. 533, 540 (1982) (holding that, in the case of sentence to life without the possibility of parole for 25 years, the statute "requires crediting time served against the minimum 25 year portion of the sentence of life imprisonment in the same manner as against any other determinate period of imprisonment").

¶10 For these purposes, custody commences "when a defendant is booked into a detention facility," *State v. Carnegie*, 174 Ariz. 452, 453–54 (App. 2005), but does not include the date sentence is imposed. *State v. Hamilton*, 153 Ariz. 244, 245–46 (App. 1987). Here, Secakuyva was booked on June 30, 2016, and remained in custody until his sentencing on August 23, 2017: a period of 419 days. Accordingly, we modify his sentence on count 1, the first of the two consecutive terms of imprisonment, to include 419 days of presentence incarceration credit.

CONCLUSION

¶11 Secakuyva's convictions and sentences are affirmed as modified to reflect credit for 419 days of presentence incarceration. After the filing of this decision, defense counsel's obligations pertaining to Secakuyva's representation in this appeal will end after informing Secakuyva 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, Secakuyva 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