

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

DELBERT ALLEN LONG, *Appellant*.

No. 1 CA-CR 17-0770
FILED 8-14-2018

Appeal from the Superior Court in Yavapai County
No. P1300CR201601547
The Honorable Tina R. Ainley, Judge

AFFIRMED

COUNSEL

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

Law Office of Nicole Countryman, Phoenix
By Nicole Countryman
Counsel for Appellant

Delbert Allen Long, Tucson
Appellant

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MEMORANDUM DECISION

Judge Kent E. Cattani delivered the decision of the Court, in which Presiding Judge James B. Morse Jr. and Judge Lawrence F. Winthrop joined.

C A T T A N I, Judge:

¶1 Delbert Allen Long appeals his convictions and sentences for discharge of a firearm at a structure, two counts of disorderly conduct with a deadly weapon, criminal damage, disorderly conduct, and resisting arrest. Long'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. Long filed a supplemental brief, arguing that the dangerousness of the offense was improperly determined during the guilt phase (rather than at sentencing), and that the court incorrectly instructed the jury regarding dangerousness. 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 Long's supplemental brief, we affirm his convictions and sentences.

FACTS AND PROCEDURAL BACKGROUND

¶2 The victim (Long's girlfriend) was asleep in the bedroom of her house, where she lived with Long, when she was suddenly awoken by Long's screaming. When she went to the living room, she found Long screaming and punching the cabinets and walls of her house until his knuckles bled. Long had been drinking most of the day, and after taking a cold shower, retrieved a shotgun from the bedroom and shot a hole in the floor. Long then went onto the porch, yelled at the victim—who was on the phone calling 911—and fired the shotgun multiple times.

¶3 When officers arrived, Long ignored multiple commands to leave the house. Long eventually came out of the house but immediately started yelling at the officers and repeatedly told them to shoot him, and he continued to ignore instructions to allow the officers to detain him. Even after being tackled, Long resisted being handcuffed and reached for an ice pick in his back pocket.

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¶4 The State charged Long with discharge of a firearm at a structure, disorderly conduct with a weapon, resisting arrest, aggravated assault, and two misdemeanors (disorderly conduct and criminal damage). A jury found Long guilty of the first three felonies as charged, and as to the aggravated assault charge, guilty of the lesser included offense of disorderly conduct with a weapon. The superior court also found Long guilty of both misdemeanor counts. The court sentenced Long to concurrent prison terms, the longest of which is 7.5 years. The superior court gave Long 327 days of presentence incarceration credit. Long timely appealed.

DISCUSSION

I. Long's Supplemental Brief.

¶5 Long argues that under Rule 19.1 of the Arizona Rules of Criminal Procedure, a finding of dangerousness must not be made until after conviction. Rule 19.1(c) provides that noncapital sentencing allegations are to be determined following a guilty verdict. But a dangerous allegation need not be determined separately following a guilty verdict when a finding of dangerousness was inherent in the relevant offenses of conviction. *State v. Gatliff*, 209 Ariz. 362, 364, ¶ 12 (App. 2004). A dangerous offense includes one “involving the discharge, use or threatening exhibition of a deadly weapon,” A.R.S. § 13-105(13), and here, the dangerous offenses of which Long was convicted all expressly involved the discharge or use of a deadly weapon. See A.R.S. §§ 13-1211(A) (discharging a firearm at a residential structure), -2904(A)(6) (disorderly conduct with a deadly weapon). Thus, the jury properly determined dangerousness as part of its verdicts.

¶6 Long further argues that the superior court inadequately instructed the jury on the definition of a “dangerous offense.” Under A.R.S. § 13-105(13), a dangerous offense is one “involving the *discharge, use or threatening exhibition of a deadly weapon or dangerous instrument* or the intentional or knowing infliction of serious physical injury on another person.” (Emphasis added.) The court instructed the jury that a dangerous offense “means an offense that involves the discharge, use or threatening exhibition of a deadly weapon.” Although it excluded alternative bases for finding dangerousness, the instruction correctly defined a dangerous offense. Accordingly, the superior court did not err.

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II. Fundamental Error Review.

¶7 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.

¶8 Long was present and represented by counsel at all stages of the proceedings against him. The record reflects that the superior court afforded Long 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 and the court's findings. Long's sentences fall within the range prescribed by law, with proper credit given for presentence incarceration.

CONCLUSION

¶9 Long's convictions and sentences are affirmed. After the filing of this decision, defense counsel's obligations pertaining to Long's representation in this appeal will end after informing Long 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, Long 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