

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

THOMAS JOSEPH BERRY, *Appellant*.

No. 1 CA-CR 18-0752
FILED 8-13-2019

Appeal from the Superior Court in Maricopa County
No. CR2016-148001-001
The Honorable Ronda R. Fisk, Judge

AFFIRMED

COUNSEL

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

The Weingart Firm PLLC, Tempe
By Adam M. Susser
Counsel for Appellant

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MEMORANDUM DECISION

Presiding Judge Randall M. Howe delivered the decision of the Court, in which Judge Jennifer M. Perkins and Judge David D. Weinzweig 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 Thomas Joseph Berry has advised this Court that counsel found no arguable questions of law and asks us to search the record for fundamental error. Berry was convicted of one count of aggravated assault on a police officer (to wit: successful taser to leg), a class 4 felony; one count of aggravated assault on a police officer (to wit: shoulder to chest), a class 5 felony; and one count of resisting arrest by using physical force, a class 6 felony. Berry was given an opportunity to file a supplemental brief in propria persona; he has not done so. After reviewing the record, we affirm Berry's convictions and sentences.

FACTS AND PROCEDURAL HISTORY

¶2 We view the facts in the light most favorable to sustaining the judgment and resolve all reasonable inferences against Berry. *See State v. Fontes*, 195 Ariz. 229, 230 ¶ 2 (App. 1998). On October 7, 2016, the Phoenix Police Department received a 9-1-1 call that Berry was possibly punching holes in the wall of his home. Officers William Keech, Silviu Ciobanu, and Martin Hilger responded to the house. Officers Keech and Ciobanu entered Berry's home to talk to him about the possible domestic violence incident.

¶3 They found Berry crouched and cleaning the kitchen floor when they entered. Officer Keech introduced himself and asked Berry to sit on a couch. Unprovoked, Berry arose from his crouched position, rushed at Officer Keech, and drove his shoulder into his chest. The two officers then began a physical struggle with Berry in an attempt to control his hands. Berry twisted and contorted his body, and he grabbed and pushed the officers' arms to prevent them from controlling his arms. Officer Hilger then entered the home to assist the other officers.

¶4 During the struggle, Berry took Officer Keech's taser out of its holster and shot Officer Keech's thigh with the taser. Berry attempted to

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taser Officer Keech again, but he was unsuccessful. At that point, Officer Hilger tasered Berry, and the group of men went to the floor where the struggle continued until the officers eventually subdued Berry.

¶5 Berry was indicted on October 14, 2016, and he was charged with four counts of aggravated assault on a police officer and one count of resisting arrest. At trial, Officer Keech testified to the aforementioned facts that took place at Berry's home. The jury acquitted Berry of two aggravated assault counts, but it found Berry guilty on two aggravated assault counts: (1) tasering Officer Keech's thigh and (2) shouldering Officer Keech's chest. The jury also found Berry guilty of resisting arrest.

¶6 The trial court conducted the sentencing hearing in compliance with Berry's constitutional rights and Arizona Rule of Criminal Procedure 26. The court sentenced Berry to concurrent terms of 1.5 years' imprisonment for the class 4 aggravated assault conviction, 0.75 years' imprisonment for the class 5 aggravated assault conviction, and one-year imprisonment for the resisting arrest conviction. Because Berry had been incarcerated for 752 days before sentencing, the court found that his time had been served. After holding a restitution hearing, the court ordered Berry to pay restitution in the amount of \$1,119.56. Berry timely appealed.

DISCUSSION

¶7 We review Berry's convictions and sentences for fundamental error. *See State v. Flores*, 227 Ariz. 509, 512 ¶ 12 (App. 2011). Counsel for Berry 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, and find none. All of the proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure. So far as the record reveals, counsel represented Berry at all stages of the proceedings, and the sentences imposed were within the statutory guidelines. We decline to order briefing and affirm Berry's convictions and sentences.

¶8 Upon the filing of this decision, defense counsel shall inform Berry 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). Berry 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.

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CONCLUSION

¶9

For the foregoing reasons, we affirm.



AMY M. WOOD • Clerk of the Court
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