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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

CHERYL LYNN REINBOLD, *Appellant*.

No. 1 CA-CR 19-0237
FILED 12-5-2019

Appeal from the Superior Court in Mohave County
No. S8015CR201801042
The Honorable Billy K. Sipe, Judge *Pro Tempore*

AFFIRMED

COUNSEL

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

Law Offices of Harriette P. Levitt, Tucson
By Harriette P. Levitt
Counsel for Appellant

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MEMORANDUM DECISION

Presiding Judge Randall M. Howe delivered the decision of the Court, in which Judge David D. Weinzwieg 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 Cheryl Lynn Reinbold has advised this Court that she has found no arguable questions of law and asks us to search the record for fundamental error. Reinbold was convicted of theft, a class 1 misdemeanor and possession of drug paraphernalia, a class 6 felony. Reinbold was given an opportunity to file a supplemental brief in propria persona; she has not done so. After reviewing the record, we affirm Reinbold's convictions and sentences but we modify her sentencing order to include one more day of presentence incarceration credit for a total of 80 days.

FACTS AND PROCEDURAL HISTORY

¶2 We view the facts in the light most favorable to sustaining the judgment and resolve all reasonable inferences against Reinbold. *See State v. Fontes*, 195 Ariz. 229, 230 ¶ 2 (App. 1998). In June 2018, Reinbold drove to an RV park in Bullhead City where she spoke with M.G., the owner. Reinbold said her boyfriend, who is M.G.'s employee, smashed her windshield and demanded that M.G. give her money to cover the replacement cost but M.G. refused. Shortly thereafter, M.G. saw Reinbold load his tools into her Dodge Durango and leave. M.G. contacted the police and gave them a list of the missing tools and a description of Reinbold's car. Police located Reinbold's Dodge Durango, conducted a traffic stop, and found tools matching the description of M.G.'s stolen tools. M.G. was called to the scene where he identified the tools in Reinbold's car.

¶3 Reinbold was arrested and police conducted an inventory search of her car. During the inventory search, police found three capped syringes and a glass pipe with burnt residue consistent with methamphetamine. The pipe was tested at the Department of Public Safety's crime laboratory which confirmed the presence of methamphetamine. Reinbold was charged with theft and possession of drug paraphernalia.

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¶4 At trial, Reinbold admitted she had a prior felony conviction for trespassing in 2014. After a two-day trial, the jury found Reinbold guilty of theft and possession of drug paraphernalia. The jury also found the value of the tools to be less than \$1,000.

¶5 The trial court conducted the sentencing hearing in compliance with Reinbold's constitutional rights and Arizona Rule of Criminal Procedure 26. The trial court found one aggravating circumstance; Reinbold had a prior felony conviction for trespassing in 2014, which also classified her as a category two repetitive offender. The trial court found the fact that the case involved a small amount of drug paraphernalia as a mitigating circumstance. Reinbold was sentenced to a mitigated term of one-year imprisonment for possession of drug paraphernalia and 79 days' jail for theft. The trial court gave Reinbold 79 days' presentence incarceration credit for both counts.

DISCUSSION

¶6 We review Reinbold's convictions and sentences for fundamental error. *See State v. Flores*, 227 Ariz. 509, 512 ¶ 12 (App. 2011). Counsel for Reinbold has advised this Court that after a diligent search of the entire record, she has found no arguable question of law.

¶7 The trial court properly proceeded with trial in absentia when Reinbold failed to appear for jury selection. "[A] defendant's voluntary absence waives the right to be present at any proceeding." Ariz. R. Crim. P. 9.1. Voluntary absence can be inferred if "the defendant had actual notice of the date and time of the proceeding, notice of the right to be present, and notice that the proceeding would go forward in the defendant's absence." *Id.* Reinbold was notified that she might be tried in her absence if she failed to appear for trial and Reinbold was present when the trial date was set at the Final Management Conference. Because Reinbold was aware of the trial date and voluntarily chose not to appear for jury selection, she waived her right to be present and the trial court did not err by proceeding in her absence.

¶8 Reinbold's presentence incarceration credit, however, is incorrect. The trial court gave Reinbold 79 days of presentence incarceration credit. Reinbold's criminal history report shows that she was in custody for a total of 81 days (June 26, 2018 to August 8, 2018 and March 20, 2019 to April 25, 2019), including the day of sentencing, held on April 25, 2019. Because a defendant does not receive credit for the day of sentencing, Reinbold was entitled to receive 80 days of presentence incarceration credit.

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See A.R.S. § 13-712(A); *State v. Lopez*, 153 Ariz. 285, 285 (1987) (“Where the sentencing day is the first day of the sentence under Subsection (A), it does not also count as the last day of pre-sentence credit under Subsection (B).”). As a result, the trial court erred in awarding Reinbold only 79 days of presentence incarceration credit. This Court modifies Reinbold’s sentencing order to add one more day for a total of 80 days’ presentence incarceration credit. See Ariz. R. Crim. P. 31.19(c); *State v. Stevens*, 173 Ariz. 494, 496 (App. 1992) (modifying the defendant’s sentence to include presentence incarceration credit).

¶9 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 the proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure. So far as the record reveals, counsel represented Reinbold at all stages of the proceedings, and the sentences imposed were within the statutory guidelines. We decline to order briefing and affirm Reinbold’s convictions and sentences.

¶10 Upon the filing of this decision, defense counsel shall inform Reinbold of the status of the appeal and of her 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). Reinbold shall have 30 days from the date of this decision to proceed, if she desires, with a pro per motion for reconsideration or petition for review.

CONCLUSION

¶11 For the foregoing reasons, we affirm Reinbold’s convictions and sentences but we modify her sentencing order to include 80 days of presentence incarceration credit.



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