

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  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

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STATE OF ARIZONA, *Appellee*,

v.

LUIS CHRISTOPHER MENDEZ, *Appellant*.

No. 1 CA-CR 18-0485  
FILED 1-9-2020

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Appeal from the Superior Court in Maricopa County  
No. CR2014-157451-001  
The Honorable Erin Otis, Judge

**AFFIRMED**

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COUNSEL

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

The Law Office of Kyle T. Green, Tempe  
By Kyle Green  
*Counsel for Appellant*

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**MEMORANDUM DECISION**

Judge James B. Morse Jr. delivered the decision of the Court, in which Presiding Judge Jennifer B. Campbell and Judge Maria Elena Cruz joined.

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**M O R S E**, Judge:

¶1 Luis Christopher Mendez appeals his conviction and sentence for one count of possession or use of dangerous drugs, a class four felony, and one count of possession of drug paraphernalia, a class six felony. After searching the entire record, Mendez's defense counsel identified no arguable question of law that is not frivolous. Therefore, in accordance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297 (1969), defense counsel asks this court to search the record for fundamental error. Mendez was also allowed to file a supplemental brief in propria persona but did not do so. Finding no reversible error, we affirm.

**FACTS<sup>1</sup> AND PROCEDURAL BACKGROUND**

¶2 On April 23, 2014, a casino security guard saw Mendez smoking something that smelled like marijuana in the Talking Stick casino parking lot. When they later spoke, Mendez told the security guard that he had marijuana and a medical marijuana card. The security guard informed Mendez that medical marijuana cards were not valid on tribal land and called for the Salt River Police Department ("SRPD"). An officer and a detective with the SRPD arrived and spoke with Mendez. The detective asked Mendez if he could remove the marijuana from Mendez's vehicle. Mendez agreed and gave the detective the keys to the car. Inside the car, the detective saw and smelled marijuana smoke, and found a glasses case underneath the driver's seat and suspected marijuana elsewhere in the car. The glasses case contained a baggie of methamphetamine and a green glass pipe.

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<sup>1</sup> "We view the facts in the light most favorable to sustaining the convictions with all reasonable inferences resolved against the defendant." *State v. Harm*, 236 Ariz. 402, 404, ¶ 2 n.2 (App. 2015) (citation omitted).

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¶3 Mendez was advised of his *Miranda*<sup>2</sup> rights and questioned about the methamphetamine. He denied using the drug and claimed that his girlfriend used methamphetamine. When asked if he knew the methamphetamine was in the car, Mendez said that he had told his girlfriend "to get the stuff out of the vehicle." Mendez also said that his fingerprints would "probably" be on the glasses case.

¶4 Mendez was charged with Count 1: possession of dangerous drugs (methamphetamine); and Count 2: possession of drug paraphernalia (the glass pipe). On the day of the scheduled trial, the parties informed the court that they wished to discuss a potential plea agreement to resolve the case. After discussing the proposed plea agreement and potential sentencing ramifications on the record, Mendez requested a brief recess to speak with his girlfriend. After a seventeen-minute recess, Mendez failed to return and the trial court granted the state's request to proceed *in absentia*.

¶5 The jury convicted Mendez of both counts and the court issued a warrant for his arrest. Mendez was ultimately apprehended and sentencing was held on October 10, 2017. Although the state had alleged that Mendez had two prior felony convictions, the state did not attempt to prove his prior convictions and Mendez was sentenced as a non-repetitive offender to concurrent presumptive prison terms for each count (2.5 years for Count 1, and one year for Count 2) with credit for 114 days of presentence incarceration.<sup>3</sup> Mendez timely filed a notice of appeal and we have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1), 13-4031, and 4033(A)(1).

### DISCUSSION

¶6 Our review reveals no fundamental error. *See Leon*, 104 Ariz. at 300. The proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure and Mendez was represented by counsel at all critical stages of the proceedings and, except for trial *in absentia*, was present at all critical stages of the proceedings. *See State v. Conner*, 163 Ariz. 97, 104

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<sup>2</sup> *Miranda v. Arizona*, 384 U.S. 436 (1966).

<sup>3</sup> Mendez was simultaneously sentenced as a repetitive offender, pursuant to a plea agreement in another case, to a prison term of 10 years concurrent to the sentences imposed in this case. The other case is not at issue in this appeal.

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(1990) (discussing the right to counsel at critical stages); *State v. Bohn*, 116 Ariz. 500, 503 (1977) (noting the right to be present at critical stages).

¶7 The trial court did not err by allowing the trial to proceed *in absentia* when Mendez failed to appear. Mendez asked for a brief recess just prior to jury selection and did not return to court. The court reasonably found that Mendez had notice of the date and time of the trial and the record reflects that Mendez had notice that the proceeding would go forward in his absence. *See* Ariz. R. Crim. P. 9.1 (authorizing trial *in absentia* when a defendant voluntarily absents himself).

¶8 The jury was properly comprised, and there is no evidence of jury misconduct. *See* A.R.S. § 21-102(B). The trial court properly instructed the jury on the elements of the charged offenses, the State's burden of proof, and the presumption of innocence. At sentencing, the court received a presentence report, Mendez was given an opportunity to speak, and the court stated on the record the evidence and factors it considered in imposing the sentences. *See* Ariz. R. Crim. P. 26.9, 26.10. The sentence imposed was appropriate and within the statutory limits.

CONCLUSION

¶9 Mendez's convictions and sentences are affirmed. Defense counsel's obligations pertaining to Mendez's representation in this appeal have ended. Defense counsel need do no more than inform Mendez of the outcome of this appeal and his future options, unless, upon review, counsel finds an issue appropriate to submit to our supreme court for further review. *State v. Shattuck*, 140 Ariz. 582, 584-85 (1984).

¶10 Mendez has thirty days from the date of this decision to proceed, if he wishes, with an *in propria persona* motion for reconsideration or petition for review.



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