

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  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

MICHAEL DALEY CLUFF, *Appellant*.

No. 1 CA-CR 19-0633

FILED 12-1-2020

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Appeal from the Superior Court in Maricopa County  
No. CR 2018-138379-001  
The Honorable Annielaurie Van Wie, Judge *Pro Tempore*

**AFFIRMED**

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COUNSEL

Arizona Attorney General's Office, Phoenix  
By Michael O'Toole  
*Counsel for Appellee*

Maricopa County Public Defender's Office, Phoenix  
By Mark E. Dwyer  
*Counsel for Appellant*

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**MEMORANDUM DECISION**

Presiding Judge Jennifer B. Campbell delivered the decision of the Court, in which Judge Lawrence F. Winthrop and Chief Judge Peter B. Swann<sup>1</sup> joined.

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**C A M P B E L L**, Judge:

¶1 This appeal is presented to us pursuant to *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297 (1969). Defense counsel has searched the record on appeal and advised us there are no meritorious grounds for reversal. Cluff was given the opportunity to file a supplemental brief but did not do so. Our obligation is to review the entire record for reversible error, *State v. Clark*, 196 Ariz. 530, 537, ¶ 30 (App. 1999), viewing the evidence in the light most favorable to sustaining the conviction and resolving all reasonable inferences against Cluff. *State v. Guerra*, 161 Ariz. 289, 293 (1989).

¶2 An officer driving a marked police vehicle pulled over Michael Cluff for invalid vehicle registration. As the officer approached, Cluff got out of his truck with a knife in his hand and yelled for the officer to kill him. As Cluff approached, the officer backed up and attempted to deploy his taser. The officer testified that he was fearful and that Cluff appeared intoxicated. The taser was ineffective, and Cluff got back in his truck and drove away.

¶3 The officer followed Cluff with lights and siren activated and was soon joined by other officers. One of the officers performed a “pit maneuver” to stop Cluff, who they then arrested. Cluff’s blood was drawn and testing revealed he had a blood alcohol concentration of .387.

¶4 Cluff was charged with aggravated assault with a deadly weapon, aggravated driving or actual physical control while under the influence of intoxicating liquor or drugs (“aggravated DUI”), and unlawful flight from a law enforcement vehicle. After a four-day trial, the jury found Cluff guilty of disorderly conduct, a lesser-included offense, aggravated DUI, and unlawful flight. Cluff was sentenced to presumptive terms for all

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<sup>1</sup> Chief Judge Peter B. Swann replaces the Honorable Kenton D. Jones, who was originally assigned to this panel.

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three counts – as a dangerous offender on Count 1 and a repeat offender on Counts 2 and 3 – all running consecutively. Cluff was awarded 72 days of presentence incarceration credit. Cluff timely appealed.

¶5 After a thorough review of the record, we find no reversible error. *Clark*, 196 Ariz. at 541, ¶ 50. The record reflects Cluff was present and represented by counsel at all critical stages of the proceedings. The evidence presented supports the convictions, and the sentences imposed by the court fall within the range permitted by law. The court awarded Cluff 72 days of presentence incarceration credit, but he was entitled to only 71 days. The State did not cross-appeal the court’s calculation and thus we have no authority to correct it. *State v. Dawson*, 164 Ariz. 278, 286 (1990) (“In the absence of a timely appeal or cross-appeal by the state seeking to correct an illegally lenient sentence, an appellate court has no subject matter jurisdiction to consider that issue.”). The record supports our determination that the proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure and Cluff’s constitutional and statutory rights. Therefore, we affirm Cluff’s convictions and sentences.

¶6 Unless defense counsel finds an issue that may be appropriately submitted to the Arizona Supreme Court, his obligations are fulfilled once he informs Cluff of the outcome of this appeal and his future options. *State v. Shattuck*, 140 Ariz. 582, 584-85 (1984). Cluff has 30 days from the date of this decision to proceed, if he wishes, with a pro per motion for reconsideration or petition for review.



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