

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

JOHN AUSTIN MCGRAW, *Appellant*.

No. 1 CA-CR 21-0527
FILED 11-1-2022

Appeal from the Superior Court in Yavapai County
No. P1300CR201801257
The Honorable Krista M. Carman, Judge

AFFIRMED

COUNSEL

Arizona Attorney General's Office, Phoenix
By Linley Wilson
Counsel for Appellee

Willison Law, PC, Prescott
By Stephanie Willison
Counsel for Appellant

MEMORANDUM DECISION

Judge Brian Y. Furuya delivered the decision of the Court, in which Presiding Judge David D. Weinzwieg and Judge Jennifer M. Perkins joined.

FURUYA, Judge:

¶1 This is an appeal under *Anders v. California*, 386 U.S. 738 (1967) and *State v. Leon*, 104 Ariz. 297 (1969). Counsel for defendant John McGraw advised this court that she has found no arguable question of law after searching the entire record and asks this court to conduct an *Anders* review. McGraw was given the opportunity to file a supplemental brief but did not do so. This court has reviewed counsel's brief and the record and has found no reversible error. Accordingly, McGraw's conviction and resulting sentence are affirmed.

FACTS AND PROCEDURAL HISTORY

¶2 On June 9, 2018, Officer Cody Kruse observed a white Toyota Camry with a broken windshield driving abnormally around 2:00 a.m. He observed that the driver appeared to brake suddenly upon coming within sight of Officer Kruse's marked police car, changed lanes to exit the freeway, and failed to stop before the line at a stop sign. Officer Kruse initiated a traffic stop and found one occupant in the car, the driver John McGraw. While speaking with McGraw, Officer Kruse observed that McGraw had watery, bloodshot eyes, constricted pupils, and appeared jittery and was twitching. Upon checking McGraw's driver's license, Officer Kruse discovered his license was suspended. Suspecting that McGraw was intoxicated, Officer Kruse conducted field sobriety tests, which McGraw struggled to complete satisfactorily.

¶3 Officer Kruse placed McGraw under arrest for driving while under the influence. In anticipation of McGraw's car being towed and consistent with Department policy, Officer Kruse conducted an inventory search of the vehicle. His search uncovered a syringe tucked between the driver's seat and the center console of the vehicle, a broken glass pipe with what appeared to be Methamphetamine residue, and four baggies which were later revealed to contain over 44 grams of meth.

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¶4 At the Mayer police substation, McGraw refused to submit to testing to determine whether or to what extent he was under the influence of alcohol or drugs. Officer Kruse obtained a search warrant for the testing, but McGraw still refused. Department policy prevented Officer Kruse from forcibly obtaining a blood sample for testing, and so no such tests were conducted.

¶5 McGraw was indicted on three counts: Count 1, Sale or Transportation of Dangerous Drugs, a Class 2 felony; Count 2, Possession of Drug Paraphernalia, a Class 6 felony; and Count 3, Aggravated Driving or Actual Physical Control While Under the Influence of Intoxicating Liquor or Drugs, a Class 4 felony.

¶6 At trial, McGraw conceded he had been in possession of meth and the parties stipulated that his license was suspended in Arizona. Defense counsel made a Rule 20 motion on Count 1, arguing that insufficient evidence supported finding McGraw possessed the meth for sale. The State had presented evidence that meth purchases for personal use are typically about a gram in size but can be up to 3.5 grams. The court denied the motion. At closing, the State argued that the amount of meth in McGraw's possession, combined with his unemployment status at the time, supported finding that McGraw possessed and transported the meth with the intent to sell.

¶7 McGraw was found guilty on all three counts after a jury trial. Although the State had previously intended to allege that McGraw had one historical prior conviction, the State did not prove that prior at trial. McGraw was sentenced to a mitigated term of five years' flat time in the Arizona Department of Corrections on Count 1, a mitigated term of three months on Count 2, and a mitigated term of one year on Count 3, all to run concurrently. McGraw received credit for 34 days of presentence incarceration. McGraw timely appealed.

DISCUSSION

¶8 The record shows that McGraw was represented by counsel at all stages of the proceedings and that counsel was present at all critical stages. The record contains substantial evidence supporting the verdict. The sentences imposed were within statutory limits, or otherwise not reviewable. *See* Ariz. Rev. Stat. ("A.R.S.") §§ 13-3407(A)(7), (B)(2), (E); 13-3415(A), (F)(2); 13-702(D); 28-1383(A)(1). The award of presentence incarceration credit was accurate. And in all other respects, from the record

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presented, all proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure.

CONCLUSION

¶9 This court has read and considered counsel's brief and has searched the record provided for reversible error and has found none. *Leon*, 104 Ariz. at 300; *State v. Clark*, 196 Ariz. 530, 537 ¶ 30 (App. 1999). Accordingly, McGraw's conviction and resulting sentence are affirmed.

¶10 Upon the filing of this decision, counsel is directed to inform McGraw of the status of the appeal and of his future options. Defense counsel has no further obligations unless, upon review, counsel identifies an issue appropriate for submission to the Arizona Supreme Court by petition for review. See *State v. Shattuck*, 140 Ariz. 582, 584-85 (1984). McGraw shall have 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