

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



DIVISION ONE
FILED: 07-29-2010
PHILIP G. URRY, CLERK
BY: DN

STATE OF ARIZONA,) 1 CA-CR 09-0080
)
Appellee,) DEPARTMENT A
)
v.) **MEMORANDUM DECISION**
) (Not for Publication
RALPH DALTON LYNCH,) - Rule 111, Rules of
) the Arizona Supreme
Appellant.) Court)
)

Appeal from the Superior Court in Yavapai County

Cause No. V-1300-CR-0820080527

The Honorable Tina R. Ainley, Judge

AFFIRMED

Terry Goddard, Attorney General Phoenix
By Kent E. Cattani, Chief Counsel
Criminal Appeals/Capital Litigation Section
Attorneys for Appellee

Abigail Jensen, P.C. Prescott
By Abigail Jensen
Attorney for Appellant

Ralph Dalton Lynch Florence
Appellant

P O R T L E Y, Judge

¶1 This is an appeal under *Anders v. California*, 386 U.S. 738 (1967) and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969). Counsel for Ralph Dalton Lynch ("Defendant") has advised us that after searching the entire record, she has been unable to discover any arguable questions of law and has filed a brief requesting us to conduct an *Anders* review of the record. This court granted Defendant an opportunity to file a supplemental brief, and he has done so.

FACTS¹

¶2 In August 2008, police officers received information from a U.S. Marshal that Defendant had been living in Yavapai County for at least ten days and had failed to register as a sex offender. The U.S. Marshal informed police that Defendant was in a grocery store and that he was going to wait for the police to arrive before questioning Defendant. Prior to being arrested, Defendant told the officers that he had been living in Yavapai County for approximately two weeks and that he believed he did not have to register as a sex offender.

¶3 He was charged with failure to register as a sex offender, a class four felony. Prior to trial, the parties

¹ We review the facts in the light most favorable to sustaining the verdict. See *State v. Guerra*, 161 Ariz. 289, 293, 778 P.2d 1185, 1189 (1989).

stipulated that Defendant was convicted of sexual assault in 1983. He testified at trial and admitted a prior felony conviction.

¶14 The jury found him guilty as charged. As a result, Defendant was sentenced to five years in prison and was awarded 175 days of presentence incarceration credit. He appealed, and we have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution, and Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1) (2003), 13-4031, and -4033(A) 2010.

DISCUSSION

¶15 Defendant, in his supplemental brief, makes the following arguments: (1) he was not required to register as a sex offender, (2) his counsel was ineffective, and (3) the police did not have probable cause to arrest him.

¶16 Defendant argues that he was not required to register as a sex offender because he was convicted of sexual assault before the sex offender registration statute was enacted.² The Arizona Supreme Court's decision in *State v. Noble* undermines Defendant's argument. 171 Ariz. 171, 829 P.2d 1217 (1992).

¶17 In *Noble*, the defendants claimed that Arizona's sex offender registration statute violated the *ex post facto* clause of the Arizona and U.S. Constitutions when applied to sex

² The sex offender registration statute, A.R.S. § 13-3821 (2010), was enacted in 1983.

offenders who were convicted before its enactment. 171 Ariz. at 173, 829 P.2d at 1219. The Court held that the sex offender registration statute is "not an unconstitutional *ex post facto* law" because it "is regulatory in nature." *Id.* at 178, 829 P.2d at 1224. Consequently, like *Noble*, we reject Defendant's argument that he was not required to register as a sex offender.

¶8 Defendant next argues that his counsel was ineffective. Claims for ineffective assistance of counsel cannot be raised on appeal. *State v. Spreitz*, 202 Ariz. 1, 3, ¶ 9, 39 P.3d 525, 527 (2002). Rather, such claims must be raised in a post-conviction relief proceeding under Arizona Rule of Criminal Procedure 32. *Id.* Consequently, we will not address the claim.

¶9 Finally, Defendant contends that the police did not have probable cause to arrest him. He argues that the failure to register as a sex offender charge in Yuma County should have been tried prior to this case. He then claims that because the Yuma County case was ultimately dismissed, the police may not have had sufficient probable cause to arrest him in this case. We disagree.

¶10 The dismissal of the Yuma County case does not dictate whether there was probable cause to arrest him in this case for failure to register as a sex offender. Here, he told the police

that he had been living in Yavapai County for "a couple of weeks" but did not believe he was required to register as sex offender. Although he was wrong about registering, the fact that he told police he had lived locally for approximately two weeks provided probable cause to arrest him. Consequently, we find no basis to reverse his conviction.³

¶11 We have read and considered counsel's brief, Defendant's brief, and have searched the entire record for reversible error. *See Leon*, 104 Ariz. at 300, 451 P.2d at 881.

¶12 Having addressed Defendant's supplemental arguments, and having searched the entire record for reversible error, we find none. All of the proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure. The record, as presented, reveals that Defendant was represented by counsel at all stages of the proceedings, and the sentence imposed was within the statutory limits.

CONCLUSION

¶13 After this decision has been filed, counsel's obligation to represent Defendant in this appeal has ended. Counsel need do no more than inform Defendant of the status of the appeal and Defendant's future options, unless counsel's

³ A.R.S. § 13-3821 requires that sex offenders must register in each county where they remain for more than ten days.

review reveals an issue appropriate for submission to the Arizona Supreme Court by petition for review. See *State v. Shattuck*, 140 Ariz. 582, 585, 684 P.2d 154, 157 (1984). Defendant can, if he desires, file a motion for reconsideration or petition for review pursuant to the Arizona Rules of Criminal Procedure.

¶14 Accordingly, we affirm Defendant's conviction and sentence.

/s/

MAURICE PORTLEY, Judge

CONCURRING:

/s/

DIANE M. JOHNSEN, Presiding Judge

/s/

DANIEL A. BARKER, Judge