

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



DIVISION ONE
FILED: 10-05-2010
RUTH WILLINGHAM,
ACTING CLERK
BY: GH

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,)
) No. 1 CA-CR 09-0256
)
 Appellee,) DEPARTMENT E
)
 v.) **MEMORANDUM DECISION**
)
 VIRGIL RAY HAMPTON,) (Not for Publication -
) Rule 111, Rules of the
 Appellant.) Arizona Supreme Court)
)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR 2008-110278-001 DT

The Honorable Steven K. Holding, Judge Pro Tempore

AFFIRMED

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

Sullivan Law Office PLLC Mesa
by Dianne Sullivan
Attorneys for Appellant

H A L L, Judge

¶1 Virgil Ray Hampton (defendant) appeals from his convictions and the sentences imposed.

¶2 Defendant's appellate counsel filed a brief in accordance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), advising that, after a diligent search of the record, she was unable to find any arguable grounds for reversal. This court granted defendant an opportunity to file a supplemental brief, which he has not done. See *State v. Clark*, 196 Ariz. 530, 537, ¶ 30, 2 P.3d 89, 96 (App. 1999).

¶3 We review for fundamental error, error that goes to the foundation of a case or takes from the defendant a right essential to his defense. See *State v. King*, 158 Ariz. 419, 424, 763 P.2d 239, 244 (1988). We view the evidence presented in a light most favorable to sustaining the verdict. *State v. Cropper*, 205 Ariz. 181, 182, ¶ 2, 68 P.3d 407, 408 (2003). Finding no reversible error, we affirm.

¶4 On February 22, 2008, defendant was charged by indictment with one count of resisting arrest (Count I), a class six felony, in violation of Arizona Revised Statutes (A.R.S.) section 13-2508(A)(1) (2010) and one count of misconduct involving weapons (Count II), a class four felony, in violation of A.R.S. § 13-3102(A)(4) (2010). The following evidence was presented at trial.

¶15 On February 14, 2008, while on routine patrol, Detectives C.M. and J.N. of the Phoenix Police Department were traveling west on Wier Road when they had to "abruptly stop" to avoid striking a "brownish" color Chevrolet Caprice that failed to stop at a stop sign and instead travelled several feet into the intersection. Detective C.M. turned his spotlight on the vehicle and recognized defendant¹ as the driver. The detective then waved the vehicle on so the vehicle would be in front of them.

¶16 Once defendant's vehicle was positioned in front of them, the detectives activated their unmarked vehicle's interior emergency lights. Defendant did not pull over until he reached his residence. Both detectives exited their vehicle and approached defendant's car.

¶17 Defendant appeared nervous. When asked if he had any guns or drugs inside the vehicle, defendant stated that he did not. Detective C.M. then asked defendant to place his hands on the back of his neck and proceeded to help him exit the vehicle. After defendant stepped out of the vehicle, Detective C.M. patted him down for weapons and/or drugs. Defendant then consented to a search of his vehicle. Detective J.N. remained with defendant while Detective C.M. conducted the search of the

¹ Detective C.M. knew defendant's criminal history and status as a prohibited possessor. At trial, the parties stipulated that defendant is a convicted felon and prohibited possessor.

vehicle. Detective C.M. found a handgun under the back seat and immediately exited the vehicle. As the detective approached defendant, defendant acted like he was going to "jump up and run away." Detective C.M. pushed him down and told him he was under arrest. Defendant physically struggled with the officers for approximately thirty seconds before they were able to restrain him.

¶18 After a three-day trial, the jury found defendant guilty on both counts. Defendant admitted three prior felony convictions and the trial court sentenced defendant to the presumptive term of 3.75 years in prison on Count I and a concurrent presumptive 10 years in prison on Count II.

¶19 We have read and considered counsel's brief and have searched the entire record for reversible error. *See Leon*, 104 Ariz. at 300, 451 P.2d at 881. We find none. All of the proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure. Defendant was given an opportunity to speak before sentencing, and the sentences imposed were within statutory limits. Furthermore, based on our review of the record, there was sufficient evidence for the jury to find that defendant committed the offenses for which he was convicted.

¶10 After the filing of this decision, counsel's obligations pertaining to defendant's representation in this appeal have ended. Counsel need do no more than inform

defendant of the status of the appeal and his future options, unless counsel's review reveals an issue appropriate for submission to the Arizona Supreme Court by petition for review. See *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984). Defendant has thirty days from the date of this decision to proceed, if he desires, with a pro per motion for reconsideration or petition for review. Accordingly, defendant's convictions and sentences are affirmed.

_____/s/_____
PHILIP HALL, Judge

CONCURRING:

_____/s/_____
DIANE M. JOHNSEN, Presiding Judge

_____/s/_____
PATRICK IRVINE, Judge