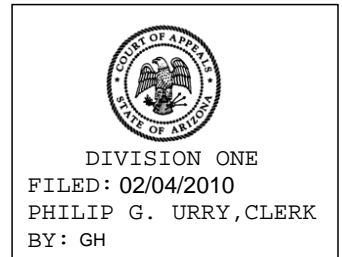


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



STATE OF ARIZONA,) 1 CA-CR 09-0277
)
Appellee,) DEPARTMENT B
)
v.) **MEMORANDUM DECISION**
) (Not for Publication - Rule
LEONARD KIMO MANAKU,) 111, Rules of the Arizona
) Supreme Court)
Appellant.)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR 2008-112824-001 DT

The Honorable Barbara L. Spencer, Judge Pro Tempore

AFFIRMED

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

James J. Haas, Maricopa County Public Defender Phoenix
By Terry Reid, Deputy Public Defender
Attorneys for Appellant

N O R R I S, Judge

¶1 Leonard Kimo Manaku appeals from his convictions and sentences for two counts of misconduct involving weapons. After searching the record on appeal and finding no arguable question of law that was not frivolous, Manaku's 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), asking this court to search the record for fundamental error. This court granted counsel's motion to allow Manaku to file a supplemental brief *in propria persona*, but Manaku chose not to do so. After reviewing the entire record, we find no fundamental error and therefore affirm Manaku's convictions and sentences.

FACTS AND PROCEDURAL BACKGROUND¹

¶12 Around 2:00 p.m. on February 26, 2008, Officers B. and C. responded to a call describing a man with a knife walking in the area of 28th Avenue and Lewis Drive in Phoenix. On their way to the call, the officers saw Manaku, whose clothing matched the caller's description. The officers stopped Manaku, and Officer B. conducted a pat down and found a "homemade" knife "about nine and a half inches in length" "in a big sheath" tucked into the back of Manaku's pants. Shortly afterwards, Officer B. placed Manaku under arrest and searched him incident to arrest. Officer B. found a box of 24 bullets in Manaku's pocket and a loaded Ruger .357 revolver in the front of his

¹We view the facts in the light most favorable to sustaining the jury's verdict and resolve all inferences against Manaku. *State v. Guerra*, 161 Ariz. 289, 293, 778 P.2d 1185, 1189 (1989).

pants.² At the time of his arrest, Manaku was a prohibited possessor pursuant to Arizona Revised Statutes ("A.R.S.") section 13-3101(A)(7)(b) (Supp. 2009) (previously A.R.S. § 13-3101(A)(6)(b)).

¶13 A grand jury indicted Manaku on two counts of misconduct involving weapons (a gun and a knife) while being a prohibited possessor, each a class four felony.³ See A.R.S. § 13-3102(A)(4), (L) (A.R.S. § 13-3102(L) was previously A.R.S. § 13-3102(K)). The jury found Manaku guilty on both counts. On March 31, 2009, the superior court sentenced Manaku to ten years on each count, with the sentences to run concurrently, and gave Manaku 398 days of presentence incarceration credit.

¶14 Manaku timely appealed. We have jurisdiction pursuant to Article 6, Section 9 of the Arizona Constitution and A.R.S. sections 12-120.21(A)(1) (2003), 13-4031 (2001) and -4033(A)(1) (Supp. 2009).

²Although Manaku testified he did not have a gun, "it is the trier of fact's role, and not this court's, to 'resolve conflicting testimony and to weigh the credibility of witnesses.'" *State v. Lee*, 217 Ariz. 514, 516, ¶ 10, 176 P.3d 712, 714 (App. 2008) (quoting *State v. Alvarado*, 158 Ariz. 89, 92, 761 P.2d 163, 166 (App. 1988)).

³The grand jury also indicted Manaku on two other counts. At the State's request, without objection, the court dismissed these two counts without prejudice.

DISCUSSION

¶15 We have reviewed the entire record for reversible error and find none. See *Leon*, 104 Ariz. at 300, 451 P.2d at 881. Manaku was represented by counsel at all stages of the proceedings and was personally present at all critical stages. The jury was properly comprised of 12 members. The court properly instructed the jury on the elements of the crime, the State's burden of proof, and the necessity of a unanimous verdict. Manaku was given an opportunity to speak at sentencing. Manaku's sentence was within the range of acceptable sentences and the superior court imposed the presumptive sentences for misconduct involving weapons with two prior felony offenses. See A.R.S. §§ 13-3102(K), -604(C) (Supp. 2007) (A.R.S. § 13-3102(K) is now A.R.S. § 13-3102(L), and A.R.S. § 13-604(C) is now A.R.S. § 13-703(C), (J) (Supp. 2009)).

CONCLUSION

¶16 For the foregoing reasons, we decline to order briefing and affirm Manaku's convictions and sentences.

¶17 After the filing of this decision, defense counsel's obligations pertaining to Manaku's representation in this appeal have ended. Defense counsel need do no more than inform Manaku of the outcome of this appeal and his future options, unless, upon review, counsel finds an issue appropriate for submission

to the Arizona Supreme Court by petition for review. *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984).

¶18 Manaku has 30 days from the date of this decision to proceed, if he wishes, with an *in propria persona* petition for review. On the court's own motion, we also grant Manaku 30 days from the date of this decision to file an *in propria persona* motion for reconsideration.

/s/

PATRICIA K. NORRIS, Presiding Judge

CONCURRING:

/s/

SHELDON H. WEISBERG, Judge

/s/

MARGARET H. DOWNIE, Judge