

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



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FILED: 04-15-2010
PHILIP G. URRY, CLERK
BY: GH

STATE OF ARIZONA,) No. 1 CA-CR 09-0280
)
Appellee,) DEPARTMENT D
)
) **MEMORANDUM DECISION**
v.) (Not for Publication-
) Rule 111, Rules of the
JOSE MIKE HERNANDEZ,) Arizona Supreme Court)
)
Appellant.)
_____)

Appeal from the Superior Court of Maricopa County

Cause No. CR2008-005777-001 DT

The Honorable Sally S. Duncan, Judge

AFFIRMED

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

James J. Haas, Maricopa County Public Defender Phoenix
By Eleanor S. Terpstra,
Deputy Public Defender
Attorneys for Appellant

T H O M P S O N, Judge

¶1 This case comes to us as an appeal under *Anders v. California*, 386 U.S. 738 (1978), and *State v. Leon*, 104 Ariz.

297, 451 P.2d 878 (1969). Counsel for Jose Mike Hernandez (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 this court conduct an *Anders* review of the record. Defendant has been afforded an opportunity to file a supplemental brief *in propria persona*, and he has not done so.

¶12 An undercover Arizona Department of Public Safety officer went to defendant's residence on July 25, 2007, to purchase illegal drugs. The officer had previously encountered defendant at this location and identified defendant from photographs of residents of that address. Defendant answered the door, and the undercover officer asked him for a "forty," street slang for forty dollars' worth of illegal drugs, here methamphetamine. Defendant replied that he did not have any but was waiting for a delivery. The officer asked defendant to call when the drugs arrived. Defendant responded that the supplier would not come unless the money was present and asked the officer to leave the money. The officer refused, and defendant suggested that they go to the supplier instead.

¶13 As defendant and the officer were exiting defendant's residence, they encountered another individual, whom defendant invited inside. Defendant and the third individual had a conversation in Spanish that the officer did not understand.

After the conversation, defendant asked the officer for the money, and the officer gave defendant forty dollars, which defendant in turn handed to the third individual. This individual opened a small case and removed a scale and a plastic bag containing a crystalline substance that appeared to be methamphetamine. The individual weighed out a small amount of the methamphetamine and directed defendant to retrieve a nearby cellophane cigarette pack wrapper, into which the individual placed the methamphetamine. The individual handed the bagged methamphetamine to defendant, who in turn handed it to the officer. The officer shook hands with defendant and left with the bagged substance, which was later tested and confirmed to be a usable amount (0.9107 grams) of methamphetamine.

¶4 Defendant was arrested and indicted on one count of sale or transportation of dangerous drugs, a class 2 felony. Defendant's first trial, during which he argued that police had misidentified him, resulted in a mistrial due to a hung jury. Defendant was retried and convicted. Defendant was sentenced to a mitigated sentence of five years imprisonment with credit for 77 days of presentence incarceration. Defendant appealed.

¶5 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. Defendant asked counsel to raise twelve issues on direct appeal. We find no reversible error

pertaining to these claims or otherwise. Additionally, we note that defendant must raise his claim of ineffective assistance of counsel in a post-conviction relief petition and has already done so, and that defendant received the correct presentence incarceration credit of 77 days. All of the proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure. So far as the record reveals, defendant was adequately represented by counsel at all stages of the proceedings, and the sentence imposed was within the statutory limits. Pursuant to *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984), defendant's counsel's obligations in this appeal are at an end.

¶16 We affirm the conviction and sentence.

/s/

JON W. THOMPSON, Judge

CONCURRING:

/s/

JOHN C. GEMMILL, Presiding Judge

/s/

PATRICK IRVINE, Judge