

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: 05-18-2010
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BY: GH

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,)
) No. 1 CA-CR 09-0406
)
 Appellee,) DEPARTMENT E
)
 v.) **MEMORANDUM DECISION**
)
 JAMES THOMAS KUEHL,) (Not for Publication -
) Rule 111, Rules of the
 Appellant.) Arizona Supreme Court)
)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR 2003-021794-001-DT

The Honorable Barbara L. Spencer, Judge Pro Tempore

AFFIRMED

Terry Goddard, Arizona 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 Cory Engle, Deputy Public Defender
Attorneys for Appellant

H A L L, Judge

¶1 James Thomas Kuehl 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, he 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 September 29, 2003, defendant was charged by information with Count One: theft of means of transportation, a class three felony, in violation of Arizona Revised Statutes (A.R.S.) section 13-1814(A)(5) (2010), and Count Two: unlawful flight from law enforcement vehicle, a class five felony, in violation of A.R.S. § 28-622.01 (2004).

¶15 On August 25 2003, T.E. took her 2002 Chevrolet Cavalier to Lou Grubb Chevrolet for warranty work. Later that day, the dealership called T.E. and asked if she had picked up the vehicle. T.E. was asked to come to the dealership where they informed her that her vehicle had been stolen off of the lot.

¶16 On September 19, 2003, while on routine patrol, Officer J.W. of the Phoenix Police Department observed a "gray or silverish car" with a possible expired license plate sticker. Officer J.W. asked his partner, Officer J.S., to check the license plate number through the patrol vehicle's computer system. The officers quickly learned that the vehicle had been reported stolen.

¶17 The officers then advised the radio dispatcher that they were following an occupied stolen vehicle and requested a helicopter and other units as back up. Officer J.W. testified that while traveling northbound, the stolen vehicle turned into an apartment complex. The officers followed the vehicle through the apartment complex and Officer J.W. observed the driver, defendant, turn around and look back at the patrol car. As the officers continued to follow the vehicle, Officer J.W. observed that the stolen car's brake lights were coming on intermittently. At that point, the officers activated the overhead lights on the patrol car because they thought defendant

may take off running on foot. They continued to follow the vehicle through an electric gate and saw the vehicle accelerate and collide with a pickup truck. The vehicle then accelerated again, but defendant was unable to correct the vehicle and he crossed six lanes of traffic and struck a light pole.

¶18 As Officer J.W. approached the vehicle, defendant attempted to flee on foot. After they both slid down an embankment, Officer J.W. took defendant into custody.

¶19 Defendant was tried in absentia and, after a three-day trial, the jury found defendant guilty as charged. The trial court affirmed a bench warrant and suspended sentencing until defendant was apprehended.

¶10 Following defendant's apprehension, the trial court held a hearing on defendant's alleged historical prior felony convictions. The trial court found that defendant had one historical prior felony conviction and sentenced him to a super-mitigated term of three and one-half years imprisonment on Count One and a super-mitigated term of one year imprisonment on Count Two. The trial court ordered these sentences to run concurrently with 125 days of presentence incarceration credit.

¶11 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.

¶12 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/
SHELDON H. WEISBERG, Presiding Judge

/s/
JOHN C. GEMMILL, Judge