

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



DIVISION ONE  
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**IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE**

STATE OF ARIZONA, ) 1 CA-CR 09-0421  
)  
Appellee, ) DEPARTMENT C  
)  
v. ) **MEMORANDUM DECISION**  
) (Not for Publication -  
CHARLES EDWARD VANCE, ) Rule 111, Rules of the  
) Arizona Supreme Court)  
Appellant. )  
)

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Appeal from the Superior Court in Maricopa County

Cause No. CR2008-168925-001 DT

The Honorable John R. Hannah, Judge

**AFFIRMED AS MODIFIED**

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

Maricopa County Public Defender Phoenix  
by Joel M. Glynn, Deputy Public Defender  
Attorneys for Appellant

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**I R V I N E**, Presiding Judge

¶1 This appeal is filed in accordance with *Anders v. California*, 386 U.S. 738 (1967) and *State v. Leon*, 104 Ariz.

297, 451 P.2d 878 (1969). Counsel for Charles Edward Vance ("Vance"), asks this court to search the record for fundamental error. Vance was given an opportunity to file a supplemental brief in propria persona. Vance has not done so. After reviewing the record, we affirm Vance's convictions and sentences for sexual conduct with a minor.

#### **FACTS AND PROCEDURAL HISTORY**

¶2 On November 12, 2008, the grand jury issued an indictment, charging Vance with six counts of sexual conduct with a minor, class two felonies. At the close of the evidence, the trial court properly instructed the jury on the elements of the offenses. The jury convicted Vance of five counts of sexual conduct with a minor twelve years of age or younger, each a class two felony and dangerous crime against children.

¶3 The trial court conducted the sentencing hearing in compliance with Vance's constitutional rights and Rule 26 of the Arizona Rules of Criminal Procedure. The trial court sentenced Vance to consecutive flat-time terms of life without the possibility of parole for thirty-five years for each of the five

counts. Additionally, the court credited Vance with 192 days of presentence incarceration.<sup>1</sup>

#### DISCUSSION

¶4 We exercise jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution and Arizona Revised Statutes section 12-120.21(A)(1) (2003). We review Vance's convictions and sentences for fundamental error. See *State v. Gendron*, 168 Ariz. 153, 155, 812 P.2d 626, 628 (1991).

¶5 We note that the record provides no evidence that a voluntariness hearing was held. Nevertheless, defense counsel made no objection on the basis of voluntariness to the introduction of any of Vance's prior statements. In fact, no claim or suggestion was presented, either by the evidence or by counsel, that Vance's prior statements were involuntary - Vance testified that he "voluntarily went by myself and went and spoke to [police]." Consequently, we find that no separate voluntariness hearing was required. See *State v. Peats*, 106 Ariz. 254, 257, 475 P.2d 238, 241 (1970).

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<sup>1</sup> The record indicates that the trial court's minute entry indicates Vance received 109 days of presentence incarceration credit; however, the transcript of the sentencing hearing reflects that the court properly credited Vance with 192 days of presentence incarceration. Because presentence incarceration credit calculation errors can be corrected without a remand to trial court, see *State v. Stevens*, 173 Ariz. 494, 496, 844 P.2d 661, 663 (App. 1992); Ariz.R.Crim.P. 31.17(b), we modify the sentencing minute entry to reflect 192 days of presentence incarceration credit.

¶6 Counsel for Vance has advised this court that after a diligent search of the entire record, he has found no arguable question of law. The court has read and considered counsel's brief and fully reviewed the 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. So far as the record reveals, Vance was represented by counsel at all stages of the proceedings and the sentences imposed were within the statutory limits. We decline to order briefing and we affirm Vance's convictions and sentences.

¶7 Upon the filing of this decision, defense counsel shall inform Vance of the status of his appeal and of his future options. Defense counsel has no further obligations unless, upon review, counsel finds 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). Vance shall have thirty days from the date of this decision to proceed, if he desires, with a pro per motion for reconsideration or petition for review. On the court's own motion, we extend the time for Vance to file a pro per motion for reconsideration to thirty days from the date of this decision.

**CONCLUSION**

¶8 We affirm Vance's convictions and sentences as modified to reflect 192 days of presentence incarceration credit on Count 1.

/s/

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PATRICK IRVINE, Presiding Judge

CONCURRING:

/s/

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MICHAEL J. BROWN, Judge

/s/

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DONN KESSLER, Judge