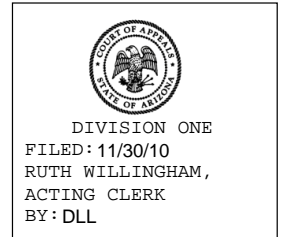


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



STATE OF ARIZONA,) No. 1 CA-CR 09-0638
)
Appellee,) DEPARTMENT B
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
CHRISTOPHER ALLEN VALDEZ,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. CR2007-008352-001 DT

The Honorable John R. Hannah, Judge

CONVICTIONS AFFIRMED; SENTENCES AFFIRMED AS MODIFIED

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

Sharmila Roy Laveen
Attorney for Appellant

B R O W N, Judge

¶1 Christopher Allen Valdez appeals from his convictions and sentences for misconduct involving weapons. Counsel for Valdez 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). Finding no arguable issues to raise, counsel requests that this court search the record for fundamental error. Valdez was granted the opportunity to file a supplemental brief *in propria persona*, but he has not done so.

¶2 Our obligation in this appeal is to review the entire record for reversible error. *State v. Clark*, 196 Ariz. 530, 537, ¶ 30, 2 P.3d 89, 96 (App. 1999). We view the facts in the light most favorable to sustaining the convictions and resolve all reasonable inferences against Valdez. See *State v. Guerra*, 161 Ariz. 289, 293, 778 P.2d 1185, 1189 (1989). Finding no reversible error, we affirm the convictions as well as the resulting sentences, as modified herein.

¶3 Valdez was indicted on two counts of misconduct involving weapons, class 4 felonies, in violation of Arizona Revised Statutes ("A.R.S.") section 13-3102 (Supp. 2010).¹ The indictment alleged that Valdez knowingly possessed a pipe bomb, a prohibited weapon (count one), and that he possessed the pipe bomb as a prohibited possessor (count two). The following evidence was presented at trial.

¶4 In August 2007, Detective Noyd was conducting surveillance at a hotel. A Toyota Camry vehicle entered the

¹ Absent material revisions after the date of an alleged offense, we cite the statute's current version.

parking lot and "several people [got] in and out." Because that particular make of vehicle is often reported stolen, Noyd had another officer check its status. After obtaining information that the registered owner of the Camry, Valdez, had an outstanding warrant, Noyd called for patrol units to assist in making a stop as he observed the vehicle leave the parking lot.

¶15 Officer Petersen responded to the call and followed the Camry into a residential neighborhood. When the occupants of the Camry began to exit after pulling into a driveway, Petersen advised them to stay in the vehicle. The driver retreated back into the vehicle but another passenger and Valdez continued moving away from the vehicle toward a house. Petersen noticed Valdez was carrying a small gray object in his left hand. Petersen ordered him to stop, but Valdez refused. Valdez was between two cars in the driveway when Petersen lost sight of him momentarily. After Valdez reappeared, Petersen noticed that the gray object was no longer in his hands. Valdez then complied with Petersen's request to stop and was placed under arrest.

¶16 When backup units responded, Petersen searched the area where Valdez had stopped. Under a bush near the home, Petersen found the gray object, which appeared to be a case for sunglasses. When he opened it, he discovered a pipe bomb. The bomb squad was called to the scene to detonate the bomb. A

forensic scientist testified that the bomb particles contained an explosive double-base smokeless gunpowder.

¶17 A jury found Valdez guilty of both counts.² Valdez stipulated to five prior convictions, and the trial court found that two of them qualified as historical prior felony convictions. The court then sentenced Valdez to a mitigated term of eight years for each count, to be served concurrently, and granted 623 days of presentence incarceration credit.

¶18 We have searched the entire record for fundamental error and find none, other than a sentencing error. Although the trial court correctly applied Valdez's presentence incarceration credit on count one, Valdez was eligible to receive the credit on both counts because the court imposed concurrent sentences. *See State v. Cruz-Mata*, 138 Ariz. 370, 375, 674 P.2d 1368, 1373 (1983) (crediting appellants for time spent in presentence custody to each concurrent sentence). Thus, we modify Valdez's sentencing minute entry to reflect 623 days of presentence incarceration credit to be applied to counts one and two.

¶19 All of the proceedings were conducted in accordance with the Arizona Rules of Criminal Procedure. The record shows Valdez was present and represented by counsel or advisory

² At trial, the parties stipulated that Valdez was a prohibited possessor on the date of the incident.

counsel³ at all pertinent stages of the proceedings, was afforded the opportunity to speak before sentencing, and the sentences imposed were within statutory limits. Accordingly, we affirm Valdez's convictions and sentences as modified herein.

¶10 Upon the filing of this decision, counsel shall inform Valdez of the status of the appeal and his 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). Valdez shall have thirty days from the date of this decision to proceed, if he so desires, with a *pro per* motion for reconsideration or petition for review.

/s/

MICHAEL J. BROWN, Judge

CONCURRING:

/s/

DIANE M. JOHNSEN, Presiding Judge

/s/

JOHN C. GEMMILL, Judge

³ Valdez represented himself for the first two days of trial, with advisory counsel. Thereafter, at Valdez's request, advisory counsel represented him for the remainder of the trial.