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See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
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RUTH WILLINGHAM,
ACTING CLERK
BY: GH

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) 1 CA-CR 09-0693
)
Appellee,) DEPARTMENT C
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
STEVEN RAY HUDDLESTON,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2007-008284-001 DT

The Honorable Barbara L. Spencer, Judge Pro Tempore

AFFIRMED AS MODIFIED

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 Kathryn L. Petroff, Deputy Public Defender
Attorneys for Appellant

O R O Z C O, Judge

¶1 Steven Ray Huddleston (Defendant) appeals his conviction and sentence for second degree murder. Defendant'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), advising this court that after a search of the entire appellate record, she found no arguable question of law that was not frivolous. Defendant was afforded the opportunity and multiple time extensions to file a supplemental brief but he has failed to do so.¹

¶2 Our obligation on 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 have jurisdiction pursuant to Article 6, Section 9 of the Arizona Constitution, and Arizona Revised Statutes (A.R.S.) sections 12-120.21.A.1. (2003), 13-4031, and -4033.A.1. (2010).² For the following reasons, we affirm Defendant's conviction and sentence but

¹ Defendant's original deadline to file a supplemental brief was June 14, 2010. Defendant filed a motion to extend the time to file a supplemental brief. That motion was granted and Defendant was given until July 27, 2010 to file the supplemental brief. Defendant filed a second time-extending motion, which was granted and extended the time to September 7, 2010. Defendant was told that no further extensions would be granted. Defendant filed a third time extending motion which was denied, as he had been granted 85 days beyond the original deadline to file a supplemental brief and failed to do so.

² We cite to the current version of the applicable statutes when no revisions material to this decision have since occurred.

modify his sentence to reflect five additional days of presentence incarceration credit.

FACTS AND PROCEDURAL HISTORY

¶3 We review the facts in the light most favorable to sustaining the verdict and resolve all reasonable inferences against Defendant. *State v. Kiper*, 181 Ariz. 62, 64, 887 P.2d 592, 594 (App. 1994). Defendant was indicted with second degree murder. A warrant was issued and Defendant was arrested on October 21, 2007.

¶4 Prior to trial, Defendant filed a motion to suppress statements made to officers about the homicide. After a series of voluntariness hearings regarding three sets of statements - two made to officers while Defendant was in the hospital, and the other made to officers on the date of his arrest - the trial court denied the motion.

¶5 A jury was empanelled and Defendant's trial commenced. Witnesses testified that on the night of January 29, 2007, Defendant was in the area of 51st Avenue and South Mountain Avenue. Defendant had been stabbed 9 times and appeared to have been in possession of the victim's car, the inside of which was soiled with blood and dried mud. Police found a knife inside the victim's car. Upon further investigation, the victim's DNA was on the blade and Defendant's DNA was on the handle.

¶6 Defendant was taken to the hospital where he began to explain his injuries. Officer S testified that Defendant told him that he and the victim had been driving in the area of 51st Avenue and Dobbins Road when the victim stopped and both got out of the car to talk with two individuals walking along the road. One of the individuals then stabbed Defendant numerous times without provocation. Finally, the two individuals carried the victim, who was screaming for help, off into a field as Defendant escaped in the victim's car.

¶7 On January 30, 2007, the victim's body was discovered in an irrigation ditch near 63rd Avenue and Dobbins Road. The victim had been shot twice, once in the back and once in the head; and his left ear had been partially severed. The ground was wet in the area where the body was found. Witness testimony indicated that it had not been raining on the night of the 29th, but that Defendant's clothes were soiled with blood, water, and dirt. Investigators also found Defendant's DNA on the victim's body in the form of blood drops on the victim's back.

¶8 While in the hospital, Defendant was interviewed by Detective D. This time, Defendant changed his story and stated that the victim did not get out of the car when he saw the two unidentified individuals walking along the road; rather, the victim picked them up and gave them a ride. Defendant said that

the two individuals sat in the backseat. However, evidence indicated that the backseat was cluttered with items and two individuals could not have fit.

¶9 After his arrest, Defendant was again interviewed by Detective D. During this interview, Defendant provided another version of how events unfolded. Defendant claimed that the two unidentified individuals had a gun and forced the victim and Defendant, at gunpoint, to fight each other with the knife.

¶10 At the conclusion of trial the jury found Defendant guilty as charged.

DISCUSSION

¶11 Having considered defense counsel's brief and examined the record for reversible error, we find none. *Clark*, 196 Ariz. at 541, ¶ 49, 2 P.3d at 100. The sentence imposed falls within the range permitted by law, see A.R.S. § 13-710, and the evidence presented supports the jury's verdict that Defendant is guilty of second degree murder in violation of A.R.S. § 13-1104.

Sufficiency of Evidence

¶12 Evidence is sufficient when it is "more than a [mere] scintilla and is such proof" as could convince reasonable persons of Defendant's guilt beyond a reasonable doubt. *State v. Tison*, 129 Ariz. 546, 553, 633 P.2d 355, 362 (1981). "[C]ircumstantial evidence when examined as a whole [may]

provide the jury with sufficient evidence from which it could [find] appellant guilty beyond a reasonable doubt" *Id.* at 554, 633 P.2d at 363; see *State v. Henry*, 205 Ariz. 229, 232, 68 P.3d 455, 458 (App. 2003) ("Substantial evidence, which may be either circumstantial or direct, is evidence that a reasonable jury can accept as sufficient to infer guilt beyond a reasonable doubt."). "The lack of direct evidence of guilt does not preclude such a conclusion since a criminal conviction may rest solely upon proof of a circumstantial nature." *Tison*, 129 Ariz. at 554, 633 P.2d at 363 (citing *State v. Carriger*, 123 Ariz. 335, 599 P.2d 788 (1979)); accord *State v. Green*, 111 Ariz. 444, 446, 532 P.2d 506, 508 (1975) ("There is no distinction in the probative value of direct and circumstantial evidence."). "To set aside a jury verdict for insufficient evidence it must clearly appear that upon no hypothesis whatever is there sufficient evidence to support the conclusion reached by the jury." *State v. Arredondo*, 155 Ariz. 314, 316, 746 P.2d 484, 486 (1987) (citation omitted).

¶13 The evidence presented at trial indicates that Defendant and the victim were together on the night of the murder, and that both were present in the ditch where the victim's body was found. On the night of January 29, 2007, Defendant was discovered two miles from the victim's body,

suffering from multiple stab wounds and in possession of the victim's car. Both Defendant and the inside of the victim's car were soiled with mud and blood, while victim's body was later found in an irrigation ditch with water.

¶14 Evidence also demonstrated that Defendant and the victim were involved in a violent altercation. The victim's left ear had been partially severed, and Defendant was found near the victim's car. Inside the car, police discovered a knife with the victim's DNA on the blade and Defendant's DNA on the handle. Also, Defendant's blood was found on the victim's body.

¶15 Defendant proffered several different versions of how events unfolded on the night of the murder. In each version, the only consistency was that he and the victim were together at the time of the killing.

¶16 While circumstantial in nature, the evidence was sufficient to connect Defendant to the victim. The evidence also indicated not only that the two were involved in a violent altercation where both were injured, but also that Defendant lied several times about his involvement in the victim's death. When viewed in the light most favorable to sustaining the verdict, the evidence is sufficient to sustain the jury's determination that Defendant is guilty.

Presentence Credit

¶17 Defendant was present and represented by counsel at all stages of the proceedings and these proceedings were conducted in compliance with his constitutional and statutory rights, as well as with the Arizona Rules of Criminal Procedure.

¶18 We have determined, however, that the trial court incorrectly calculated Defendant's credit for time served. "Sentencing determinations are reviewed for abuse of discretion." *State v. Davolt*, 207 Ariz. 191, 216, ¶ 112, 84 P.3d 456, 481 (2004). However, the statute providing for presentence credit is mandatory "and the sentencing court has no discretion in the matter." *State v. Williams*, 128 Ariz. 415, 416, 626 P.2d 145, 146 (App. 1981).

¶19 "All time actually spent in custody pursuant to an offense until the prisoner is sentenced to imprisonment for such offense shall be credited against the term of imprisonment" A.R.S. § 13-712.B. This Court has authority to modify a sentence by granting additional presentence incarceration credit. A.R.S. § 13-4037; *State v. Stevens*, 173 Ariz. 494, 495-96, 844 P.2d 661, 662-63 (App. 1992) (correcting a miscalculation in credit by modifying the sentence without remanding to the trial court); see Ariz. R. Crim. P. 31.17.b.

¶20 "[O]nly time spent under conditions tantamount to incarceration in a jail or prison constitutes time actually spent in custody for purposes of calculating presentence incarceration credit." *State v. Cereceres*, 166 Ariz. 14, 16, 800 P.2d 1, 3 (App. 1990) (internal quotation marks omitted). "[F]or purposes of presentence incarceration credit, 'custody' begins when a defendant is booked into a detention facility." *State v. Carnegie*, 174 Ariz. 452, 453-54, 850 P.2d 690, 691-92 (App. 1993) (citing *Cereceres*, 166 Ariz. at 16, 800 P.2d at 3). "[T]he issue is whether petitioner was incarcerated 'pursuant to' the instant" charges. *State v. Brooks*, 191 Ariz. 155, 156, 953 P.2d 547, 548 (App. 1997) (holding that petitioner was entitled to presentence credit on the instant charges "even though he was also subject to a probation hold in connection with the probation revocation petition").

¶21 In this case, Defendant was arrested in Pima County on October 21, 2007, transferred to Maricopa County on October 26, 2007 and sentenced on September 11, 2009. The trial court sentenced Defendant to the presumptive term of sixteen years in the department of corrections with credit for 685 days time served. The trial court calculated from the date Defendant was transferred to Maricopa County up to but not including the date of sentencing. See *State v. Hamilton*, 153 Ariz. 244, 246, 735

P.2d 854, 856 (App. 1987) ("Where the date sentence is imposed serves . . . as the first day of sentence . . . it does not also count for presentence credit"). However, the period of time from his arrest - the point at which Defendant was placed in custody - up to but not including the date of his sentencing is 690 days. See *Carnegie*, 174 Ariz. at 454, 850 P.2d at 692 (holding that "a court must award a defendant presentence incarceration credit for the day on which he was booked into a detention facility, regardless of the time of day the booking occurred"). We, therefore, modify the sentence to reflect this.

¶22 Counsel's obligations pertaining to Defendant's representation in this appeal have ended. Counsel need not do anything more, other 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. *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 so desires, with an in propria persona motion for reconsideration or petition for review.³

³ Pursuant to Rule 31.18.b., Defendant or his counsel have fifteen days to file a motion for reconsideration. On the Court's own motion, we extend the time to file such a motion to thirty days from the date of this decision.

CONCLUSION

¶23 For the foregoing reasons, Defendant's conviction and sentence are affirmed, and his sentence is modified to reflect five additional days of presentence incarceration credit.

/S/

PATRICIA A. OROZCO, Judge

CONCURRING:

/S/

MAURICE PORTLEY, Presiding Judge

/S/

MARGARET H. DOWNIE, Judge