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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: 10/13/2011  
RUTH A. WILLINGHAM,  
CLERK  
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IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

STATE OF ARIZONA, ) No. 1 CA-CR 09-0813  
 )  
Appellee, ) DEPARTMENT A  
 )  
v. ) MEMORANDUM DECISION  
 )  
JOSE VINCENTE OZUNA, ) (Not for Publication -  
 ) Rule 111, Rules of the  
Appellant. ) Arizona Supreme Court)  
 )

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Appeal from the Superior Court in Maricopa County

Cause No. CR2009-120290-001 DT

The Honorable Lisa Ann Vandenberg, *Judge Pro Tempore*

**CONVICTIONS AND SENTENCES AFFIRMED,  
INCARCERATION CREDIT MODIFIED**

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By Ronald M. De Brigida, Jr.  
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**J O H N S E N**, Judge

¶1 This appeal was timely filed in accordance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), following Jose Vincente Ozuna's conviction of armed robbery, a Class 2 dangerous felony, and impersonating a peace officer, a Class 4 felony. Ozuna's counsel has searched the record on appeal and found no arguable question of law that is not frivolous. See *Smith v. Robbins*, 528 U.S. 259 (2000); *Anders*, 386 U.S. 738; *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999). Ozuna was given the opportunity to file a supplemental brief but did not do so. Counsel now asks this court to search the record for fundamental error. After reviewing the entire record, we affirm Ozuna's convictions and sentences, but modify his presentence incarceration credit.

#### FACTS AND PROCEDURAL HISTORY

¶2 Dressed as a police officer, Ozuna approached a street peddler one night in Surprise and demanded to see her ID.<sup>1</sup> After the woman said she did not have ID, Ozuna pulled a gun and pointed it at her. He then put the gun away and took money from the woman's back pocket and her cell phone and a box of CDs from her cart, then fled.

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<sup>1</sup> Upon review, we view the facts in the light most favorable to sustaining the jury's verdict and resolve all inferences against Ozuna. *State v. Fontes*, 195 Ariz. 229, 230, ¶ 2, 986 P.2d 897, 898 (App. 1998).

¶13 At trial, the woman testified she knew Ozuna from the neighborhood. The jury found Ozuna guilty of armed robbery and impersonating a peace officer. The superior court sentenced him to nine years' incarceration for the robbery and 2.5 years for impersonating a peace officer, to be served concurrently. The court awarded Ozuna 194 days' presentence incarceration credit.

¶14 Ozuna timely appealed. 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) (2011), 13-4031 (2011) and -4033 (2011).<sup>2</sup>

#### **DISCUSSION**

¶15 The record reflects Ozuna received a fair trial. He was represented by counsel at all stages of the proceedings against him and was present at all critical stages. The court held appropriate pretrial hearings. The State presented both direct and circumstantial evidence sufficient to allow the jury to convict. The jury was properly comprised of eight members with two alternates. The court properly instructed the jury on the elements of the charges, the State's burden of proof and the necessity of a unanimous verdict. The jury returned a unanimous verdict, which was confirmed by juror polling. The court received and considered a presentence report, addressed its

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<sup>2</sup> Absent material revision after the date of an alleged offense, we cite a statute's current version.

contents during the sentencing hearing and imposed legal sentences for the crimes of which Ozuna was convicted.

¶16 A defendant is entitled to presentence incarceration credit for all time spent in custody pursuant to an offense. A.R.S. § 13-712(B) (2011). A failure to award the correct amount of presentence incarceration credit towards a defendant's sentence constitutes fundamental error. *State v. Ritch*, 160 Ariz. 495, 498, 774 P.2d 234, 237 (App. 1989).

¶17 The court awarded Ozuna 194 days of presentence incarceration credit. That credit would have been correct if the court had imposed sentence on October 1, 2009, the original date of the sentencing hearing. The sentencing was continued to October 22, 2009, but Ozuna's presentence incarceration credit was not adjusted to take into account the additional time he was incarcerated prior to sentencing. Therefore, he is entitled to 215 days of credit.

#### CONCLUSION

¶18 We have reviewed the entire record for reversible error. See *Leon*, 104 Ariz. at 300, 451 P.2d at 881. The only error we have identified is that Ozuna's presentence incarceration credit was improperly calculated. Accordingly, we affirm the convictions and the sentences imposed, except that we modify the judgment to provide for 215 days of presentence incarceration credit.

¶19 After the filing of this decision, defense counsel's obligations pertaining to Ozuna's representation in this appeal have ended. Defense counsel need do no more than inform Ozuna of the outcome of this appeal and his future options, 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). On the court's own motion, Ozuna has 30 days from the date of this decision to proceed, if he wishes, with a *pro per* motion for reconsideration. Ozuna has 30 days from the date of this decision to proceed, if he wishes, with a *pro per* petition for review.

/s/  
DIANE M. JOHNSEN, Presiding Judge

CONCURRING:

/s/  
MARGARET H. DOWNIE, Judge

/s/  
JON W. THOMPSON, Judge