

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: 10-19-2010
RUTH WILLINGHAM,
ACTING CLERK
BY: GH

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) No. 1 CA-CR 09-0841
)
Appellee,) DEPARTMENT D
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
JASON BERNARD KUNZ,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
)
_____)

Appeal from the Superior Court in Mohave County

Cause No. CR 2009-0124

The Honorable Rick A. Williams, Judge

AFFIRMED

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

Carlene H. Lacey, Mohave County Public Defender Kingman
By Jill L. Evans, Mohave County Appellate Defender
Attorneys for Appellant

B R O W N, Judge

¶1 Jason Bernard Kunz appeals his conviction and sentence
for unlawful flight from a pursuing law enforcement vehicle.

Counsel for Kunz 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. Kunz was granted the opportunity to file a supplemental brief *in propria persona*, but he has not done so.

¶12 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 conviction and resolve all reasonable inferences against Kunz. *See State v. Guerra*, 161 Ariz. 289, 293, 778 P.2d 1185, 1189 (1989). Finding no reversible error, we affirm.

¶13 In January 2009, Kunz was indicted for unlawful flight from law enforcement, a class five felony, in violation of Arizona Revised Statutes ("A.R.S.") section 28-622.01 (2004). The following evidence was presented at trial.

¶14 Around 9:30 p.m. on September 19, 2008, Bullhead City Police Officer M. was on patrol in a fully marked police vehicle when he observed a black truck speeding at approximately fifty miles per hour ("m.p.h.") in a twenty-five m.p.h. zone. After the driver stopped at a stop sign, Officer M. pulled up so he was facing the driver's side of the truck and started to talk to the driver through the window. The officer was about three feet

away from the truck and he was able to see the driver with the aid of dashboard and patrol car lights. As the officer started to speak, the driver took off at a high rate of speed. The officer activated his siren and patrol lights and followed the driver throughout town between speeds of sixty and seventy m.p.h. Officer M. eventually obtained the license plate number and terminated the pursuit.

¶15 Officer M. had the police dispatch department run the license plate number through the Department of Motor Vehicles system and discovered that the truck was registered to Kunz. He was then able to obtain a photograph of Kunz and recognized him as the driver of the truck. Officer M. later visited Kunz's residence and left a business card with Kunz's girlfriend, asking her to have Kunz contact him. Two days later, Kunz contacted Officer M. and explained that he was in California on the date of the crime and that he had sold his truck to a man named "Tiny" around September 13, 2008. Kunz also stated that he had a bill of sale in a safe at his home and that his girlfriend had a copy of the bill of sale. However, no such document was ever produced.

¶16 A jury found Kunz guilty of unlawful flight from law enforcement. Following the presentation of additional evidence, the jury found that the offense was committed while on felony

release pursuant to A.R.S. § 13-708(D) (2010).¹ At sentencing, the trial court noted that the State had not attempted to prove the existence of any prior convictions for sentence enhancement purposes, but the court nonetheless found, as aggravating factors, that Kunz had two prior felony convictions. The court then sentenced Kunz to an aggravated sentence of two years for unlawful flight, plus two additional years because he committed the offense while on felony release. Kunz was credited with 246 days of presentence incarceration credit.² After trial, but prior to sentencing, Kunz entered a plea in another case and was sentenced to a concurrent sentence of eighteen years. He then filed a timely notice of appeal.

¶7 We have reviewed the entire record for reversible error and find none.³ All of the proceedings were conducted in

¹ Though the court correctly referred to A.R.S. § 13-604(R) in sentencing Kunz based on the date of the offense, the Arizona criminal sentencing code was renumbered, effective "from and after December 31, 2008." See 2008 Ariz. Sess. Laws, ch. 301, §§ 1-201. There were no substantive changes. See *id.* at § 119.

² It appears that the trial court erred in calculating Kunz's presentence incarceration credit. At most, Kunz should have received 240 days, rather than 246 days. However, the State did not challenge the calculation by filing a cross-appeal and thus we cannot correct it. See *State v. Dawson*, 164 Ariz. 278, 286, 792 P.2d 741, 749 (1990) (recognizing that absent a timely cross-appeal, appellate courts cannot correct an illegally lenient sentence that favors an appellant).

³ We note that the trial court did not review certified copies of Kunz's prior convictions. See *State v. Pandeli*, 215 Ariz. 514, 522, ¶ 12, 161 P.3d 557, 565 (2007) (finding that the

accordance with the Arizona Rules of Criminal Procedure. Moreover, the record shows Kunz was present and represented by counsel at all pertinent stages of the proceedings, was afforded the opportunity to speak before sentencing, and the sentence was imposed within statutory limits. Accordingly, we affirm Kunz's conviction and sentence.

"proper procedure to establish [a] prior conviction is for the state to offer in evidence a certified copy of the conviction") (quoting *State v. Lee*, 114 Ariz. 101, 105, 559 P.2d 657, 661 (1976))). Assuming without deciding that this was fundamental error, Kunz cannot demonstrate he was prejudiced by this error because the criminal history report showed that Kunz had been found guilty of two felonies. Moreover, Kunz did not challenge the reliability of any documentation provided to the trial court. See *State v. Morales*, 215 Ariz. 59, 62, ¶ 13, 157 P.3d 479, 482 (2007) (finding no prejudice where copies of prior convictions were admitted at a pretrial hearing and "[n]either party challenge[d] the authenticity of [the] copies, and thus evidence conclusively proving [the] prior convictions [was] already in the record").

¶18 Upon the filing of this decision, counsel shall inform Kunz 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). Kunz 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, Presiding Judge

CONCURRING:

/s/

JON W. THOMPSON, Judge

/s/

SHELDON H. WEISBERG, Judge