

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



DIVISION ONE
FILED: 09/30/2010
RUTH WILLINGHAM,
ACTING CLERK
BY: GH

STATE OF ARIZONA,) 1 CA-CR 09-0981
)
Appellee,) DEPARTMENT D
)
v.) **MEMORANDUM DECISION**
) (Not for Publication - Rule
CORY MICHAEL URAI,) 111, Rules of the Arizona
) Supreme Court)
Appellant.)
)

Appeal from the Superior Court in Mohave County

Cause No. CR 2008-0811

The Honorable Rick A. Williams, Judge

AFFIRMED AS CORRECTED

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

Jill L. Evans, Mohave County Appellate Defender Kingman
Attorney for Appellant

N O R R I S, Judge

¶1 Cory Michael Urai timely appeals from his convictions and sentence for violating Arizona Revised Statutes ("A.R.S.") section 13-3405 (Supp. 2007), possession of marijuana for sale, and A.R.S. § 13-3415 (2001), possession of drug paraphernalia, a

class 4 and class 6 felony, respectively. After searching the record on appeal and finding no arguable question of law that was not frivolous, Urai'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), asking this court to search the record for fundamental error. This court granted counsel's motion to allow Urai to file a supplemental brief *in propria persona*, but Urai chose not to do so. After reviewing the entire record, we find no fundamental error and, therefore, affirm Urai's convictions and sentence as corrected to reflect a two-day increase in his presentence incarceration credit.

FACTS AND PROCEDURAL BACKGROUND¹

¶2 On July 25, 2008, the State charged Urai with possessing marijuana for sale and possessing drug paraphernalia. At trial on these charges, the case officer testified he served a search warrant on Urai's residence.² When the officers entered the home pursuant to the search warrant, they encountered Urai and saw three bags of marijuana, a marijuana grinder, a scale, a

¹We view the facts in the light most favorable to sustaining the jury's verdict and resolve all inferences against Urai. *State v. Guerra*, 161 Ariz. 289, 293, 778 P.2d 1185, 1189 (1989).

²Before trial, the court denied Urai's motion to quash the search warrant and suppress evidence seized pursuant to the search warrant. Based on the evidence presented, the court did not abuse its discretion in doing so. *State v. Nelson*, 208 Ariz. 5, 6, ¶ 4, 90 P.3d 206, 207 (App. 2004).

water bong, and a pipe in plain view. Further, the officers seized two "pay-owe" sheets, or drug ledgers, one of which was written on the back of an OfficeMax fax transmission to a court from Urai.

¶13 At trial, the case officer testified Urai responded affirmatively to the compound question whether he had sold or smoked marijuana, although Urai later clarified two times he did not sell drugs. The case officer also testified that police informants, prior to the execution of the search warrant, found an individual other than Urai was using Urai's residence as a base of operations for selling marijuana.³

¶14 On November 4, 2009, based on this and other information, the jury found Urai guilty as charged. At sentencing, the parties stipulated Urai had been convicted of two or more prior drug-related misdemeanors, removing him from the mandatory probation provisions of A.R.S. § 13-901.01 (Supp. 2007). The court sentenced Urai to four years of probation and, as a condition of probation, ordered Urai to serve 90 days in

³This individual was never arrested on this warrant although named in the warrant, and he became a confidential informant for the police department. At trial, defense counsel vigorously cross-examined the case officer on his use of that individual as an informant and the fact that the informant and the officer's niece have a child in common.

jail, with two days of presentence incarceration credit,⁴ in addition to 360 hours of community service work. The court also imposed a mandatory fine of \$1000 plus 84% surcharge -- for a total of \$1840 -- plus \$10 probation surcharge, \$20 time payment fee, and \$25 public defender fee.⁵

DISCUSSION

¶15 We have reviewed the entire record for reversible error and find none. See *Leon*, 104 Ariz. at 300, 451 P.2d at 881. Urai received a fair trial. He was represented by counsel at all stages of the proceedings and was present at all critical stages.

¶16 The evidence presented at trial was substantial and supports the verdicts. The jury was properly comprised of eight members, and the court properly instructed the jury on the elements of the charges, Urai's presumption of innocence, the State's burden of proof, and the necessity of a unanimous verdict. The superior court received and considered a presentence report, Urai was given an opportunity to speak at sentencing, and his sentence was within the range of acceptable sentences for his offenses.

⁴The sentencing minute entry, however, indicates the court awarded Urai zero days of presentence incarceration credit.

⁵The court also ordered Urai to pay \$350 in attorneys' fees and a monthly probation assessment fee of \$65.

¶17 In our review of the record, we discovered an error in the sentencing minute entry. At the sentencing hearing, the court correctly awarded Urai two days of presentence incarceration credit.⁶ The sentencing minute entry, however, fails to reflect that award. We hereby correct the sentence imposed to reflect two days of presentence incarceration credit; Urai was awarded zero days in the minute entry. See A.R.S. § 13-712(B) (2010); *State v. Mathieu*, 165 Ariz. 20, 24-25, 795 P.2d 1303, 1307-08 (App. 1990).

CONCLUSION

¶18 We decline to order briefing and affirm Urai's convictions and sentence as corrected.

¶19 After the filing of this decision, defense counsel's obligations pertaining to Urai's representation in this appeal have ended. Defense counsel need do no more than inform Urai 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. *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984).

¶10 Urai has 30 days from the date of this decision to proceed, if he wishes, with an *in propria persona* petition for review. On the court's own motion, we also grant Urai 30 days

⁶The record reflects Urai was taken into custody on July 1, 2008. He was released on bond on July 2, 2008.

from the date of this decision to file an *in propria persona* motion for reconsideration.

/s/

PATRICIA K. NORRIS, Judge

CONCURRING:

/s/

LAWRENCE F. WINTHROP, Presiding Judge

/s/

PATRICK IRVINE, Judge