

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: 12/30/2010  
RUTH WILLINGHAM,  
ACTING CLERK  
BY: GH

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

STATE OF ARIZONA, ) No. 1 CA-CR 10-0006  
)  
Appellee, ) DEPARTMENT B  
)  
v. ) **MEMORANDUM DECISION**  
)  
LEVI LEON NASH, ) (Not for Publication -  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. CR2008-008131-001 DT

The Honorable Jeanne M. Garcia, Judge

**AFFIRMED**

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

Maricopa County Public Defender's Office Phoenix  
By Margaret M. Green, Deputy Public Defender  
Attorneys for Appellant

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G E M M I L L, Judge

¶1 Levi Leon Nash ("Nash") appeals his conviction and sentence for resisting arrest, a class six felony. Nash's counsel filed a brief in compliance with *Anders v. California*,

386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), stating that she has searched the record and found no arguable question of law and requesting that this court examine the record for reversible error. Nash was afforded the opportunity to file a supplemental brief *in propria persona* but did not do so. See *State v. Clark*, 196 Ariz. 530, 537, ¶ 30, 2 P.3d 89, 96 (App. 1999). For the following reasons, we affirm.

#### **FACTS AND PROCEDURAL HISTORY**

¶12 "We view the facts and all reasonable inferences therefrom in the light most favorable to sustaining the convictions." *State v. Powers*, 200 Ariz. 123, 124, ¶ 2, 23 P.3d 668, 669 (App. 2001).

¶13 Phoenix police responded to a 911 call related to an argument between Nash and his wife. When the officers arrived at the residence, Nash's wife was outside sitting in a car. The officers asked her what had happened. She told them that her husband had broken her CD stand and that he did not live in her house, and she wanted him escorted out. She then led the officers inside.

¶14 When the officers entered the house, they found Nash in the living room "sitting on the couch, bent over picking up CDs that were strewn all over the floor and rearranging them, putting them in the cases and setting them on top of the coffee table." A broken CD stand was lying on the ground. Officer R.

asked Nash what had happened, and Nash's only response was that he didn't like police officers. Nash then asked to speak to the supervisor. Sergeant G. happened to be there, so he stepped in. Nash reiterated that he did not like the police; he said he wanted the officers "all just to leave and leave him alone." Nash was told that the officers could not leave because they were investigating a possible crime. After speaking with Sergeant G., Nash again refused to answer any questions or tell the officers what had happened.

¶15 Nash then began arguing with his wife, who was standing by the kitchen entry, about whether or not he actually lived in the house. Nash's wife claimed that Nash did not live in the house, that everything in the house belonged to her, and that Nash needed to leave. Nash rose to his feet with clenched fists, at which point Officer R. told Nash to sit down; Nash complied.

¶16 The argument continued for a few minutes before Officer R. placed Nash under arrest for breaking the CD stand. Officer R. told Nash "to stand up, turn around and put his hands behind his back." Nash ignored the command, so Officer R. repeated his instructions three times. After getting no response from Nash, Officer R. reached down and grabbed Nash's right wrist, again told him he was under arrest, and repeated the instruction to turn around and put his hands behind his

back. Nash jerked his hand, pulling the officer closer, and leaned back into the couch. As Nash continued to struggle, Officer R. needed to use both of his hands to attempt to control Nash's right arm. Officer H., who had been standing in the background while Officer R. questioned Nash, approached from the other side and tried to control Nash's left arm. Nash continued to be noncompliant and was pulling away.

¶7 During the struggle, Nash grabbed Officer R.'s radio off of his belt and made a move towards his gun. Officer R. struck Nash with a forearm to the neck. After that, Officer R. was able to gain control of Nash's right arm. However, Nash rolled over onto his stomach and on top of his left arm, at which point Officer B. stepped in to assist Officer R. in getting Nash's left hand out from under his body and behind his back. Sergeant G. grabbed Nash's feet and pulled them out from under him "[t]o ruin his support base." When the officers were unable to get both of Nash's hands behind his back, Officer R. told Officer H. to tase Nash. Officer H. tased Nash in the shoulder for "a couple of seconds." Officer B. was finally able to pull Nash's arm out from underneath him, and the officers handcuffed him.

¶8 Nash was charged with one count of resisting arrest. Following a jury trial, Nash was convicted as charged. The court suspended imposition of sentence and imposed a three year

period of probation. This timely appeal followed.

#### DISCUSSION

¶9 Having considered defense counsel's brief and examined the record for reversible error, see *Leon*, 104 Ariz. at 300, 451 P.2d at 881, we find none. The imposition of probation falls within the range permitted by law, and the evidence presented supports the conviction. As far as the record reveals, Nash was represented by counsel at all stages of the proceedings, and these proceedings were conducted in compliance with his constitutional and statutory rights and the Arizona Rules of Criminal Procedure.

¶10 Pursuant to *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984), counsel's obligations in this appeal have ended. Counsel need do no more than inform Nash of the disposition 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. Nash has thirty days from the date of this decision in which to proceed, if he desires, with a *pro se* motion for reconsideration or petition for review.

**CONCLUSION**

¶11 The conviction and sentence are affirmed.

\_\_\_\_\_/s/\_\_\_\_\_  
JOHN C. GEMMILL, Judge

CONCURRING:

\_\_\_\_\_/s/\_\_\_\_\_  
DIANE M. JOHNSEN, Presiding Judge

\_\_\_\_\_/s/\_\_\_\_\_  
MICHAEL J. BROWN, Judge