

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: 05/19/2011
RUTH A. WILLINGHAM,
CLERK
BY: GH

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) No. 1 CA-CR 10-0037
)
Appellee,) DEPARTMENT D
)
v.) **MEMORANDUM DECISION**
)
ANDREW DWIGHT PHILLIPS,) (Not for Publication -
) Rule 111, Rules of the
Appellant.) Arizona Supreme Court)
)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2009-104995-001DT

The Honorable Kristin C. Hoffman, Judge

AFFIRMED

Thomas C. Horne, 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 Joel M. Glynn, Deputy Public Defender
Attorneys for Appellant

G E M M I L L, Judge

¶1 Andre Phillips appeals from his conviction and sentence for misconduct involving weapons. Phillips'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 he has searched the record and found no arguable question of law and requesting that this court examine the record for reversible error. Phillips 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

¶2 "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).

¶3 In January 2009, Phillips was indicted on one count of misconduct involving weapons, a class 4 felony. A five-day trial commenced in December 2009. The following evidence was presented at Phillips's trial.

¶4 On January 16, 2009, at 12:59 a.m., Sergeant H., a night detective for the police department, responded to a "priority one call" in West Phoenix. The initial police call reported a black male with a handgun, possibly from someone inside the gas station. Sergeant H. was driving an unmarked vehicle and, though he was not wearing a police uniform, he wore his badge around his neck. He also carried a gun on his hip in

a holster.

¶15 Sergeant H. witnessed three black males step out of a silver sedan. The males were "hanging" outside of the vehicle in the parking lot of a gas station. Sergeant H. testified that his plan was to wait until more officers arrived at the scene before approaching the men. As Sergeant H. waited and observed the men, the three men started to walk toward his vehicle. Sergeant H. got out of his vehicle, pulled his weapon out of the holster and pointed it to the ground, and then he identified himself as a police officer and asked the men to stop. Two of the men stopped, but one male ran in the southwest direction away from the parking lot. At trial, the sergeant identified Phillips as the individual who ran from the scene.

¶16 Officer G., a police officer assigned to the Phoenix Police Department's Air Support Unit, testified that he and Officer D. responded to the incident at the gas station in a police helicopter. Officer G. witnessed a black male, dressed in a white T-shirt and jeans, running in a southwest direction away from the gas station. The officers followed the male with the helicopter's spotlight, and saw him run into some bushes and drop white papers on the ground.

¶17 Another Phoenix Police Officer, Officer H., responded to the incident in a fully-marked police vehicle. Officer H. identified Phillips as the male he saw running from the scene.

Officer H. testified that Phillips ran "pretty much almost directly into [the] patrol car" before turning and running on the sidewalk. The officer witnessed papers fall out of Phillips's possession as he ran, and the officer also saw Phillips throw a chrome object, which looked like a gun, into a bush. Officer H. followed Phillips and apprehended him.

¶18 Officer H., along with another officer on the scene, Officer B., went to the area where he believed Phillips had thrown a gun. The helicopter lit up the area, and the officers were able to locate a loaded chrome handgun in the bushes. The officers also located the fallen paperwork, which included Phillips's name on several of the documents.

¶19 A forensic scientist with the Phoenix Police Department Crime Laboratory performed a function test on the gun, and he testified that the gun showed evidence of damage, possibly from being dropped on a hard surface, and was capable of being fired. A fingerprint examiner, also with the Phoenix Crime Lab, testified that Phillips's fingerprints matched the fingerprints on two priors pen packs.

¶10 Phillips testified at trial. Although Phillips denied possessing a gun, he admitted that he had been convicted of four prior felonies and was prohibited from possessing a weapon.

¶11 The jury found Phillips guilty of misconduct involving weapons, and the court sentenced Phillips to the presumptive

sentence of 10 years imprisonment, with 361 days of presentence incarceration credit.

¶12 Phillips 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) (2003), 13-4031 (2010), and -4033(A)(1) (2010).

DISCUSSION

¶13 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 sentence imposed falls within the range permitted by law, and the evidence presented supports the conviction. As far as the record reveals, Phillips 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.

¶14 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 Phillips 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. Phillips 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

¶15 The conviction and sentence are affirmed.

_____/s/_____
JOHN C. GEMMILL, Judge

CONCURRING:

_____/s/_____
PATRICIA K. NORRIS, Presiding Judge

_____/s/_____
PATRICIA A. OROZCO, Judge