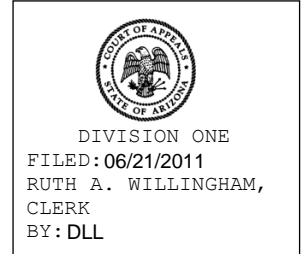


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



STATE OF ARIZONA,) No. 1 CA-CR 10-0085
)
Appellee,) DEPARTMENT D
)
v.) **MEMORANDUM DECISION**
)
GARY DEAN DIXON,) (Not for Publication -
) Rule 111, Rules of the
Appellant.) Arizona Supreme Court)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2009-141681-001 DT

The Honorable Steven P. Lynch, 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 Cory Engle, Deputy Public Defender
Attorneys for Appellant

G E M M I L L, Judge

¶1 Gary Dean Dixon appeals from his conviction and sentence for misconduct involving weapons. Dixon'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. Dixon 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 July 2009, Dixon was indicted on count one, misconduct involving weapons, a class 4 felony, in violation of Arizona Revised Statutes ("A.R.S.") section 13-3102 (Supp. 2010).¹

¶4 A four-day trial commenced in December 2009. The following evidence was presented at Dixon's trial.

¶5 At approximately 3:30 a.m. on June 23, 2009, Phoenix Police Officers U. and H. were patrolling the area of Seventh Avenue and Van Buren in Phoenix. Officer U. noticed Dixon on a bicycle at the southwest corner of the intersection. The bike

¹ We cite to the current version of the applicable statute because no revisions material to this decision have occurred since the offense.

lacked any visible bike lights. The officers attempted to make contact with Dixon to make sure he possessed a bike light. As the officers pulled up to the southeast curb, Dixon began to ride his bicycle eastbound against traffic. Officer H. briefly exited the police car and yelled for Dixon to stop, but Dixon continued eastbound on his bicycle. The officers proceeded eastbound in the police car across Seventh Avenue on Van Buren as Dixon turned into a McDonald's parking lot. Dixon rode his bicycle around the parking lot, and then he turned and proceeded westbound towards Seventh Avenue. The officers then observed Dixon riding his bicycle in the southwest direction towards the Social Security building across the street from the McDonald's. The officers followed Dixon in their police car, and Officer U. testified that he saw Dixon fall off of the bicycle and a yellow towel fall from Dixon's waistband. The area was illuminated by tall street lamps. Officer U. immediately exited the police car and told Dixon, who was still on the ground as a result of his fall, to put his hands in front of him. Officer H. approached on Dixon's left side and Officer U. on his right side. Officer H. put his lower knee into Dixon's back to prevent Dixon from getting up while the officers put handcuffs on Dixon. After the officers rolled Dixon onto his side, Officer U. saw a yellow towel underneath Dixon, in the same area where he previously saw a yellow towel fall from Dixon's waistband. The yellow towel

was wrapped three to four times around a loaded gun. Officer H. then read Dixon his *Miranda*² rights.

¶6 After conducting a records check on Dixon, Officer U. discovered that Dixon was a prohibited possessor. During questioning at the Fourth Avenue Jail, Dixon admitted to being a prohibited possessor because he was a convicted felon whose rights had not been restored and to possessing the yellow towel, but he denied owning the gun.

¶7 Forensic scientists testified that Dixon's fingerprints matched the fingerprints on the Arizona Department of Corrections prison packet, and also that the gun found at the scene was capable of being fired.

¶8 On the third day of trial, after the State rested its case-in-chief, Dixon moved for a dismissal pursuant to Rule 20. The court denied the motion.

¶9 Dixon testified and, although he admitted to being on his bicycle near Seventh Street and Van Buren on June 23, 2009, he denied ever possessing a gun. Dixon stated that he first saw the gun after police officers searched him and "pulled [the yellow rag] out of [his] pants." Dixon also admitted to being prohibited from possessing firearms because his rights had not been restored following two prior felonies.

² *Miranda v. Arizona*, 384 U.S. 436 (1966).

¶10 The jury found Dixon guilty of count one, misconduct involving weapons, a class 4 felony. Dixon admitted to two prior felony convictions when he testified. In accordance with A.R.S. § 13-703 (2009), the court sentenced Dixon to the presumptive sentence of 10 years' incarceration with 202 days of presentence incarceration credit.

¶11 Dixon timely appealed, and we have jurisdiction pursuant to Article 6, Section 9 of the Arizona Constitution, and A.R.S. §§ 12-120.21(A)(1) (2003), 13-4031 (2010) and 13-4033(A)(1) (2010).

DISCUSSION

¶12 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, Dixon 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.

¶13 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 Dixon 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. Dixon 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

¶14 The conviction and sentence are affirmed.

_____/s/_____
JOHN C. GEMMILL, Judge

CONCURRING:

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

_____/s/_____
PATRICIA A. OROZCO, Judge