

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: 02/03/2011  
RUTH WILLINGHAM,  
ACTING CLERK  
BY: GH

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

STATE OF ARIZONA, ) 1 CA-CR 10-0099  
)  
Appellee, ) DEPARTMENT C  
)  
v. ) **MEMORANDUM DECISION**  
) (Not for Publication -  
LORENZO DELGADO, ) Rule 111, Rules of the  
) Arizona Supreme Court)  
Appellant. )  
)  
\_\_\_\_\_ )

Appeal from the Superior Court in Navajo County

Cause No. S0900CR20090511

The Honorable Carolyn C. Holliday, Judge

**AFFIRMED AS MODIFIED**

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

Criss Candelaria Law Office, PC Pinetop  
By Criss Candelaria  
Attorneys for Appellant

**O R O Z C O**, Judge

¶1 Lorenzo Delgado (Defendant) appeals his conviction and sentence imposed for transportation of a dangerous drug for

sale, a class two felony. We affirm his convictions and modify his sentence as explained below.

¶2 Defendant'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), advising this Court that after a search of the entire appellate record, he found no arguable question of law that was not frivolous. Defendant was afforded the opportunity to file a supplemental brief in propria persona, but he has not done so.

¶3 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 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, and -4033.A.1. (2010).<sup>1</sup> Finding no reversible error, we affirm.

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

¶4 When reviewing the record, "we view the evidence in the light most favorable to supporting the verdict." *State v. Torres-Soto*, 187 Ariz. 144, 145, 927 P.2d 804, 805 (App. 1996).

¶5 In June 2009, Defendant was a passenger in a truck being driven by Louis Jimenez-Salazar near Holbrook. Arizona

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<sup>1</sup> We cite to the current version where no changes have since occurred that are material to this decision.

Department of Public Safety (DPS) Officer D. McMains (McMains) stopped the vehicle because he believed the truck's windows were tinted such that they exceeded the legal limit. McMains asked for the vehicle's registration, Jimenez-Salazar's license, and to whom the truck belonged. Jimenez-Salazar told McMains the vehicle was his family's truck, which McMains found to be out of the ordinary.

¶16 While speaking with Jimenez-Salazar, McMains became more suspicious after learning the two men were traveling to Tennessee for work, but neither knew the details of that work, including the name of their employer or the rate of pay. Both men gave their consent for McMains to search the truck. During the search, the DPS narcotics detention canine used by McMains alerted the officer to the truck and specifically the intake manifold. During a further search of the truck, McMains opened the hood and began to search inside the engine compartment. McMains took off the air cleaner, then four bolts and noticed both Defendants' demeanor change "immediately." At this point, Officer Bratz (Bratz), who is also a certified mechanic, came to assist McMains.

¶17 Bratz took the intake manifold off the top of the engine and found four duct-taped packages inside. McMains and Bratz performed a preliminary field test of the substance inside the packages and found they contained approximately three pounds

of methamphetamine. After, finding the methamphetamine, Jimenez-Salazar and Defendant were arrested.

¶8 Defendant was charged with transportation of a dangerous drug for sale, a class two felony under A.R.S. § 13-3407.A.7. (2010). Jimenez-Salazar and Defendant were tried together and agreed to waive their right to a jury trial. Without objection by counsel, the trial court provided a single interpreter to assist both Defendants at trial. At the conclusion of Defendant's bench trial, the court found him guilty of the charged offense. Defendant was sentenced to a slightly mitigated term of seven years and six months in prison with credit for 208 days of presentence incarceration. Defendant was also ordered to pay a fine and surcharges. Defendant timely appealed.

#### **DISCUSSION**

##### *Assignment of a Single Translator*

¶9 On appeal, Defendant suggests the trial court's assignment of a single court interpreter to both Jimenez-Salazar and Defendant was error.

¶10 A defendant unable to speak or understand the English language should be afforded a translator so the defendant may effectively participate in his defense. *State v. Natividad*, 111 Ariz. 191, 194, 526 P.2d 730, 733 (1974). The burden is on the appellant to show that the interpreter at trial was deficient.

*State v. Rios*, 112 Ariz. 143, 144, 539 P.2d 900, 901 (1975).

The county shall be charged the cost of official interpreters in the prosecution or defense of criminal actions. A.R.S. § 11-601.5. (2010).

¶11 The trial court used a single court interpreter to assist the court and enable both Defendants to participate in the proceedings instead of Jimenez-Salazar and Defendant each having their own interpreter. At trial, Defendant did not object to using a single interpreter. Defendant's counsel, however, requested leniency with the opportunity to confer with Defendant between each witness' examination. The trial court did not deny or explicitly grant defense counsel's request. On appeal, Defendant has not argued that one shared interpreter instead of two limited his ability to effectively participate in the proceedings. After searching the entire record and trial transcripts, we find Defendant was able to effectively participate in his defense and no reversible error occurred.

#### *Sentencing Error*

¶12 At sentencing, the trial court sentenced Defendant to a slightly mitigated term of seven and one half years. The trial court gave Defendant 208 days presentence incarceration credit.

¶13 Presentence incarceration credit begins to accumulate on the day of booking and ends the day before sentencing. *State*

*v. Carnegie*, 174 Ariz. 452, 454-55, 850 P.2d 690, 692-93 (App. 1993). This Court has authority to modify a sentence by granting additional presentence incarceration credit. A.R.S. § 13-4037; *State v. Stevens*, 173 Ariz. 494, 495-96, 844 P.2d 661, 662-63 (App. 1992) (correcting a miscalculation in credit by modifying the sentence without remanding to the trial court); see Ariz. R. Crim. P. 31.17.b.

¶14 Here, Defendant was arrested and booked on June 13, 2009 and sentencing occurred on January 8, 2010. We find the trial court erred in its calculation of credit. We therefore modify Defendant's sentence to reflect this correction and award 209 days of presentence incarceration credit.

#### CONCLUSION

¶15 We have read and considered counsel's brief, carefully searched the entire record for reversible error and found none. *Clark*, 196 Ariz. at 541, ¶ 49, 2 P.3d at 100. All of the proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure and substantial evidence supported the trial court's finding of guilt. Defendant was present and represented by counsel at all critical stages of the proceedings. At sentencing, Defendant and his counsel were given an opportunity to speak and the court imposed a legal sentence.

¶16 Counsel's obligations pertaining to Defendant's representation in this appeal have ended. Counsel need do nothing more than inform Defendant of the status 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. *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984). Defendant shall have thirty days from the date of this decision to proceed, if he so desires, with an in propria persona motion for reconsideration or petition for review.<sup>2</sup>

¶17 For the foregoing reasons, Defendant's conviction and sentence are affirmed as modified.

/S/

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PATRICIA A. OROZCO, Judge

CONCURRING:

/S/

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MAURICE PORTLEY, Presiding Judge

/S/

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MARGARET H. DOWNIE, Judge

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<sup>2</sup> Pursuant to Arizona Rule of Criminal Procedure 31.18.b., Defendant or his counsel have fifteen days to file a motion for reconsideration. On the Court's own motion, we extend the time to file such a motion to thirty days from the date of this decision.