DIVISION ONE
FILED: 01/20/2011
RUTH WILLINGHAM, ACTING CLERK
BY: GH

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,	)	1 CA-CR 10-0302
	)	
Appellee,	)	DEPARTMENT D
	)	
v.	)	**MEMORANDUM DECISION**
	)	(Not for Publication –
CARROLL VIRGIL LOCY,	)	Rule 111, Rules of the
	)	Arizona Supreme Court)
Appellant.	)	
	)	

Appeal from the Superior Court in Maricopa County

Cause No. CR2007-130970-001SE

The Honorable Silvia R. Arellano, Judge
The Honorable Lisa Daniel Flores, Judge

AFFIRMED

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

James J. Haas, Maricopa County Public Defender — Phoenix
By Spencer D. Heffel, Deuputy Public Defender
Attorneys for Appellant

W I N T H R O P, Presiding Judge

¶1 Carroll Virgil Locy ("Appellant") appeals from his convictions for possession or use of dangerous drugs and possession of drug paraphernalia. Appellant's counsel has 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), stating that he has searched the record on appeal and found no arguable question of law that is not frivolous. Appellant's counsel therefore requests that we review the record for fundamental error. *See State v. Clark*, 196 Ariz. 530, 537, ¶ 30, 2 P.3d 89, 96 (App. 1999) (stating that this court reviews the entire record for reversible error). This court has also allowed Appellant to file a supplemental brief *in propria persona*, but he has not done so.

¶2 We have appellate jurisdiction pursuant to the Arizona Constitution, Article 6, Section 9, and Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1) (2003), 13-4031 (2010), and 13-4033(A) (2010). Finding no reversible error, we affirm Appellant's convictions and sentences.

PROCEDURAL HISTORY AND FACTS[1]

¶3 On May 14, 2007, Appellant was approached by two police officers while he was trespassing on private property. Pursuant to a lawful search, Appellant was discovered to have two baggies containing methamphetamines in his pockets.

[1] We review the facts in the light most favorable to sustaining the verdict and resolve all reasonable inferences against Appellant. *See State v. Kiper*, 181 Ariz. 62, 64, 887 P.2d 592, 594 (App. 1994).

Appellant was then arrested and read his rights pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966).

¶4 On May 16, 2007, Appellant was charged with two counts; Count 1 for the possession of use of a dangerous drug, a Class 4 felony, and Count 2 for the possession of drug paraphernalia, a class 6 felony. *See* A.R.S §§ 13-3407 (2010) and 13-3415 (2010).[2]

¶5 The State presented Appellant with a proposed plea agreement, but Appellant opted to go to trial.[3] An eight-member jury panel was selected and the case proceeded to trial on April 16, 2008. Appellant was represented at trial and was present for all portions of the trial. The State presented three witnesses, and Appellant testified on his own behalf.[4]

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[2] We cite the current version of the applicable statute because no revisions material to this decision have occurred.

[3] Prior to trial, Appellant moved to suppress the physical evidence obtained and statements elicited surrounding the arrest. Appellant initially contended the stop was unlawful; however, he later conceded the arrest was lawful and the search was incident to a lawful arrest. Following an evidentiary hearing, the court ruled that Appellant's statements concerning the presence of drugs were voluntarily made and admissible during the State's case-in-chief. Any statements made by Appellant after he was placed in handcuffs were only admissible for impeachment purposes if Appellant elected to testify.

[4] Appellant testified the police "planted" the drugs on him. On cross-examination, Appellant admitted to two prior felony convictions. He also conceded he was on parole status at the time of the subject arrest.

¶6 On April 17, 2008, the jury found Appellant guilty on both Counts. Appellant was not present for the reading of the verdict, and it was subsequently discovered that he had absconded.

¶7 Appellant was eventually apprehended in February, 2010, and was brought to court for sentencing. At the sentencing hearing, Appellant made a statement to the court on his own behalf. Although historical priors were alleged, the details of the same were not offered or proven by the State. No aggravating factors were found by the jury. The court sentenced Appellant to concurrent presumptive sentences: 2.5 years' incarceration for Count 1, and 1 year incarceration for Count 2. Appellant received credit for one hundred and seventy-four days of presentence incarceration. Counsel for Appellant filed a timely notice of appeal.

ANALYSIS

¶8 We have reviewed the entire record for reversible error and find none.[5] *See Leon*, 104 Ariz. at 300, 451 P.2d at 881; *Clark*, 196 Ariz. at 537, ¶ 30, 2 P.3d at 96. The evidence

[5] From our review of the record, however, it appears that the trial court erred in calculating Appellant's pre-sentence incarceration credit. Appellant should have received credit for only one hundred and seventy-one days, rather than the one hundred and seventy-four days he actually received. Relying on *State v. Dawson*, 164 Ariz. 278, 286, 792 P.2d 741, 749 (1990) (stating that absent a timely cross-appeal, this court cannot correct an illegally lenient sentence that favors an appellant), we do not correct this error.

presented at trial was substantial and supports the verdicts, and the sentences were properly presumptive and within the statutory limits. Appellant was represented by counsel at all stages of the proceedings and exercised his right to speak both at trial and during sentencing. The proceedings were conducted in compliance with his constitutional and statutory rights and the Arizona Rules of Criminal Procedure.

¶9 After the filing of this decision, defense counsel's obligations pertaining to Appellant's representation in this appeal have ended. Counsel need do no more than inform Appellant of the status of the appeal and of his future options, unless counsel's review reveals an issue appropriate for petition for review to the Arizona Supreme Court. *See State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984). Appellant has thirty days from the date of this decision to proceed, if he desires, with a *pro per* motion for reconsideration or petition for review.

CONCLUSION

¶10 Appellant's convictions and sentences are affirmed.

_____/S/_____
LAWRENCE F. WINTHROP, Presiding Judge

CONCURRING:

_____/S/_____
PATRICIA K. NORRIS, Judge

_____/S/_____
PATRICK IRVINE, Judge