

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



DIVISION ONE  
FILED: 06/30/2011  
RUTH A. WILLINGHAM,  
CLERK  
BY: DLL

**IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE**

STATE OF ARIZONA,

Appellee,

v.

SIMON O. GAITAN,

Appellant.

1 CA-CR 10-0400

DEPARTMENT D

**MEMORANDUM DECISION**

(Not for Publication -  
Rule 111, Rules of the  
Arizona Supreme Court)

Appeal from the Superior Court in Maricopa County

Cause No. CR2008-008244-001 DT

The Honorable Sally S. Duncan, Judge

**AFFIRMED**

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

Maricopa County Public Defender Phoenix  
By Cory Engle, Deputy Public Defender  
Attorneys for Appellant

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**I R V I N E**, Presiding Judge

¶1 This appeal is timely filed in accordance with *Anders v. California*, 386 U.S. 738 (1967) and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969). Counsel for Simon O. Gaitan, asks this

Court to search the record for fundamental error. Gaitan was given an opportunity to file a supplemental brief in propria persona. He has not done so. After reviewing the record, we affirm Gaitan's convictions and sentences for one count of possession or use of dangerous drugs, a class 4 felony, and one count of possession of drug paraphernalia, a class 6 felony.

#### FACTS AND PROCEDURAL HISTORY

¶2 We view the facts in the light most favorable to sustaining the trial court's judgment and resolve all reasonable inferences against Gaitan. *State v. Fontes*, 195 Ariz. 229, 230, ¶ 2, 986 P.2d 897, 898 (App. 1998). On the night of November 15, 2006, a patrol officer observed Gaitan and another man standing behind some bushes of a housing subdivision. Gaitan dropped to his knee and discarded something under a bush. The officer investigated and discovered a "meth" pipe and a bag containing a white crystal substance in "plain view" at the base of the bush. The officer read Gaitan his *Miranda*<sup>1</sup> rights. Gaitan subsequently confessed that the pipe was his and that the bag contained methamphetamine his girlfriend had given him. Lab tests confirmed that the substance was in fact methamphetamine.

¶3 The State charged Gaitan with one count of possession or use of dangerous drugs, a class 4 felony, and one count of

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<sup>1</sup> See *Miranda v. Arizona*, 384 U.S. 436 (1966).

possession of drug paraphernalia, a class 6 felony. At the close of evidence, the trial court properly instructed the jury on the elements of the offenses. Gaitan was convicted as charged. The trial court conducted the sentencing hearing in compliance with Gaitan's constitutional rights and Rule 26 of the Arizona Rules of Criminal Procedure. Gaitan received concurrent one-year terms of probation for each count.

#### DISCUSSION

¶4 We review Gaitan's convictions and sentences for fundamental error. See *State v. Gendron*, 168 Ariz. 153, 155, 812 P.2d 626, 628 (1991). Counsel for Gaitan has advised this Court that after a diligent search of the entire record, counsel has found no arguable question of law. We have read and considered counsel's brief and fully reviewed the record for reversible error. See *Leon*, 104 Ariz. at 300, 451 P.2d at 881. We find none.

¶5 All of the proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure. So far as the record reveals, Gaitan was represented by counsel at all stages of the proceedings. The court conducted appropriate pretrial hearings. The jury correctly consisted of eight jurors. The State presented sufficient evidence to allow a jury to convict Gaitan as charged. The jury instructions correctly stated the burden of proof, presumption of innocence, and the elements of

the charges. The jury returned unanimous guilty verdicts on both counts. At sentencing, both Gaitan and his counsel had an opportunity to speak. Gaitan's sentences were within the statutory permissible ranges. We decline to order briefing and we affirm Gaitan's convictions and sentences.

¶6 Upon the filing of this decision, defense counsel shall inform Gaitan of the status of his appeal and of his future options. Defense counsel has no further obligations unless, upon review, counsel finds an issue appropriate for submission to the Arizona Supreme Court by petition for review. See *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984). Gaitan shall have 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**

We affirm.

/s/  
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PATRICK IRVINE, Presiding Judge

CONCURRING:

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

/s/  
\_\_\_\_\_  
PHILIP HALL, Judge