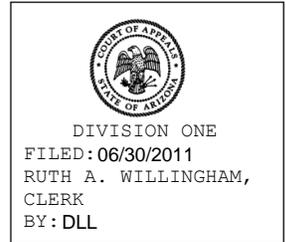


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE
CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



STATE OF ARIZONA,) 1 CA-CR 10-0593
)
) DEPARTMENT A
Appellee,)
) **MEMORANDUM DECISION**
) (Not for Publication -
v.) Rule 111, Rules of the
) Arizona Supreme Court)
)
LARRY A. STARKS,)
)
Appellant.)
_____)

Appeal from the Superior Court of Maricopa County

Cause No. CR2009-110104-001 DT

The Honorable Cari A. Harrison, Judge

AFFIRMED AS MODIFIED

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

James J. Haas, Maricopa County Public Defender Phoenix
By Terry Reid, Deputy Public Defender
Attorneys for Appellant

T H O M P S O N, Judge

¶1 This case comes to us as an appeal under *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz.

297, 451 P.2d 878 (1969). Counsel for Larry A. Starks (defendant) has advised us that, after searching the entire record, she has been unable to discover any arguable questions of law and has filed a brief requesting that this court conduct an *Anders* review of the record. Defendant has been afforded an opportunity to file a supplemental brief *in propria persona*, and he has not done so. For the following reasons, we affirm.

¶2 On three separate occasions defendant sold a usable quantity of methamphetamine to an undercover narcotics detective in Maricopa County. Police arrested defendant after the third exchange, despite his attempt to flee. Police executed a search warrant on defendant's home that same evening, and recovered methamphetamine, along with drug paraphernalia.

¶3 Defendant was charged with three counts of sale or transportation of dangerous drugs, a class two felony. He was tried *in absentia*, and a jury convicted defendant on all three counts. The trial court sentenced defendant to a mitigated sentence of five years in prison for each count, to be served concurrently, and awarded 130 days of presentence incarceration credit.

¶4 We have read and considered counsel's brief and have searched the entire record for reversible error. *See Leon,*

104 Ariz. at 300, 451 P.2d at 881. We find none. So far as the record reveals, the sentence imposed was within the statutory limits.

¶5 However, we do find error in the calculation of presentence incarceration credit. Presentence incarceration credit is granted for each day spent in custody beginning on the date of booking and ending on the date preceding sentencing. Arizona Revised Statutes (A.R.S.) § 13-712(B) (2001); *State v. Carnegie*, 174 Ariz. 452, 454, 850 P.2d 690, 692 (App. 1993). When there is an error in calculating presentence incarceration credit to a defendant's detriment, this court may correct the error without remand to the trial court. A.R.S. § 13-4037(A) (1977); *State v. Bandy*, 3 Ariz.App. 456, 457, 415 P.2d 470, 471 (App. 1966) ("If the sentence is excessive or illegal this Court has the power... to impose any legal sentence, not more severe than that originally imposed...."); see also Ariz. R. Crim. P. 31.17(b).

¶6 Here, the presentence investigation report indicates that defendant was incarcerated for eighty-one days as of May 14, 2010. Defendant remained in custody until his sentencing on July 7, 2010. Accordingly, defendant's total time incarcerated before sentencing was 134 days, not 130 days. We find that the trial court erred in calculating defendant's presentence incarceration credit, and modify defendant's

sentences to reflect this correction without remanding to the trial court. Pursuant to *State v. Shattuck*, defendant's counsel's obligations in this appeal are at an end. 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984). Defendant has thirty days from the date of this decision in which to proceed, if he desires, with an *in propria persona* motion for reconsideration or petition for review.

¶7 For the foregoing reasons, we affirm defendant's convictions and affirm his sentences as modified.

/s/

JON W. THOMPSON, Judge

CONCURRING:

/s/

PHILIP HALL, Presiding Judge

/s/

LAWRENCE F. WINTHROP, Judge