

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



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

STATE OF ARIZONA,) 1 CA-CR 10-0619
)
Appellee,) DEPARTMENT D
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
STEVE RICHARD CALZADA,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
)
)
)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. CR2010-109454-001 DT

The Honorable Christopher T. Whitten, Judge

AFFIRMED

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

James J. Haas, Maricopa County Public Defender Phoenix
By Eleanor S. Terpstra, Deputy Public Defender
Attorneys for Appellant

O R O Z C O, Judge

¶1 Steve Richard Calzada (Defendant) appeals his conviction and sentence for resisting arrest, a class one misdemeanor.

¶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, and he has done so. Defense counsel also advises this Court that Defendant wishes us to address three specific issues, and we do so below.

¶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).¹ 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 February 2010, El Mirage City Police Officers Slater and Chairez went to Defendant's home to serve an

¹ We cite to the current version of the applicable statutes when no revisions material to this decision have since occurred.

outstanding warrant for a city code violation. The officers advised Defendant that he could either be taken to see a judge in El Mirage or be taken to jail in downtown Phoenix. Slater testified that during this discussion, he told Defendant he was going to be arrested, that "he would be handcuffed[,] . . . placed in the back of the squad car" and transported to the city court. Defendant asked if he could go inside the house to get his shoes. Slater advised Defendant that an officer must accompany him back inside the house. Defendant slammed the door shut, walked towards the street, through the two officers, and cussed at the officers.

¶16 As Defendant walked past, Chairez grabbed Defendant's left wrist to put him in handcuffs and Defendant aggressively ripped away with a clenched fist. Defendant's clenched fist went towards Chairez's face nearly striking him. Slater assisted in taking Defendant down to the ground as Chairez attempted to grab Defendant, who was swinging his arms. Once on the ground, the officers attempted to get Defendant's arms out from under his body and behind his back. During the ensuing struggle, officers repeated commands to Defendant to, "stop resisting, stop resisting." Defendant received a small scratch on his cheek, Slater had a small abrasion on his left wrist, and Chairez had some small scratches on his elbow and right wrist.

¶7 Defendant's version of the events was different than that of the officers. He stated that the officers only told him that he could either go to El Mirage City Court or jail in downtown Phoenix, but did not tell him that he was under arrest until he was tackled on the ground; as he was walking towards the patrol car, officers punched him in the back of the head and began to tackle him; and he did not struggle with the officers by punching, pushing or kicking them.

¶8 The State charged Defendant with resisting arrest, a class six felony. At a bench trial, the court found Defendant guilty of resisting arrest, a class one misdemeanor. The trial court sentenced Defendant to probation for two years. Defendant timely appealed.

DISCUSSION

¶9 We address whether Defendant properly waived his right to a jury trial.²

² Defendant also claims that the State's witnesses lied to the court and fabricated their testimony. However, "the credibility of a witness is for the trier-of-fact, not an appellate court." *State v. Gallagher*, 169 Ariz. 202, 203, 818 P.2d 187, 188 (App. 1991). We therefore do not address this issue.

Defendant also claims that his counsel provided ineffective assistance in cross-examining the police officers. This Court will not address ineffective assistance of counsel claims raised in a direct appeal regardless of merit. *State v. Spreitz*, 202 Ariz. 1, 3, ¶ 9, 39 P.3d 525, 527 (2002). Therefore, we also do not address this issue.

¶10 Defendant failed to raise this issue before the trial court and therefore has forfeited appellate review, absent fundamental error. See *State v. Henderson*, 210 Ariz. 561, 567, ¶ 19, 115 P.3d 601, 607 (2005). To find fundamental error, Defendant must show that: (1) error occurred; (2) the error is fundamental; and (3) the error caused prejudice. *Id.* at 568, ¶¶ 23-26, 115 P.3d at 608. Error is fundamental if it "goes to the foundation of [the] case, takes away a right that is essential to [the] defense, and is of such magnitude that [the defendant] could not have received a fair trial." *Id.* at ¶ 24, 115 P.3d at 608. A defendant may waive the right to a trial by jury with consent of the prosecution and the court, if the court determines the right is being waived voluntarily and is submitted in writing or made in open court on the record. Ariz. R. Crim. P. 18.1.b.(1)-(2).

¶11 In this case, the court inquired as to whether Defendant sought to waive his right to a jury trial at a trial management conference. The court asked and Defendant responded that he understood the charge against him, he read and spoke English, he was not on any drugs or medication, he understood what a trial by a judge and not a jury means, and he knew that he had the right to have the matter tried by a jury if he wished. On the same day, Defendant submitted, in writing, the waiver of his right to a trial by jury, affixed with his, his

attorney's, the prosecutor's, and the judge's signatures. Therefore, we find that Defendant knowingly and willingly waived his right to a trial by jury and the trial court did not commit error in allowing Defendant to voluntarily waive this right.

CONCLUSION

¶12 We have read and considered counsel's and Defendant's supplemental in propria persona brief, carefully searched the entire record for reversible error and have 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 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.

¶13 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.³

¶14 For the foregoing reasons, Defendant's conviction and sentence is affirmed.

/S/

PATRICIA A. OROZCO, Judge

CONCURRING:

/S/

PATRICIA K. NORRIS, Presiding Judge

/S/

JOHN C. GEMMILL, Judge

³ Pursuant to Rule 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.