

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: 09/20/2011
RUTH A. WILLINGHAM,
CLERK
BY: GH

STATE OF ARIZONA,) 1 CA-CR 10-0738
)
Appellee,) DEPARTMENT E
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
) Rule 111, Rules of the
TODD RAY RICHARDSON,) Arizona Supreme Court)
)
Appellant.)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2009-007847-001 DT

The Honorable Julie P. Newell, Judge Pro Tempore

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 Joel M. Glynn, Deputy Public Defender
Attorneys for Appellant

P O R T L E Y, Judge

¶1 This is 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 Defendant Todd Ray Richardson has advised us that, after searching the entire record, he has been unable to discover any arguable questions of law, and has filed a brief requesting us to conduct an *Anders* review of the record. Defendant did not file a supplemental brief.

FACTS¹

¶2 A car stopped near 15th Avenue and Cocopah Street² around midnight on April 28, 2009. Phoenix police officer Neuhaus watched the car and, as he drove closer in his patrol car and turned on his overhead lights, the car drove away. Defendant, who had been talking with the occupants of the car, was left standing in the middle of the street. The officer yelled at him to get out of the street. Defendant did not move, and remained in the middle of the street even after the officer got out of his car and repeatedly told him to get out of the street. Instead of moving, Defendant challenged the officer's authority to make him move.

¶3 The officer, who knew Defendant was a gang member,³ handcuffed Defendant so that he could write a citation for

¹ We review the facts in the light most favorable to sustaining the verdict. See *State v. Guerra*, 161 Ariz. 289, 293, 778 P.2d 1185, 1189 (1989).

² There was testimony that the neighborhood where Defendant was arrested is the territory of the West Side City Crips, a street gang.

³ Other police officers also testified that Defendant was a gang member.

obstructing the roadway. Defendant, however, told the officer that he was going to get him; a statement that the officer took as a threat of physical harm. After other police officers arrived and Officer Neuhaus was getting information from his patrol computer, Defendant looked at him and yelled, "I'm going to get your ass," as well as words threatening members of the officer's family - "somebody's going to die."⁴ Officer Neuhaus subsequently put Defendant in his patrol car and took him to jail.

¶4 Defendant was indicted for allegedly threatening or intimidating conduct towards Officers Neuhaus (Count 1), Madura (Count 2), and Holton (Count 3). The State also filed allegations that Defendant intended to promote, further, or assist criminal conduct by a criminal street gang,⁵ allegations of historical priors and allegations of aggravating circumstances other than prior convictions.

¶5 The case proceeded to trial. After the State rested, Defendant made a motion pursuant to Arizona Rule of Criminal Procedure 20, which was denied. The defense then rested. The trial court gave the jury its final instructions and the lawyers

⁴ There was also testimony that Defendant, while handcuffed and seated on the ground, made threatening statements to Officers Holton and Madura after they arrived to provide backup for Officer Neuhaus.

⁵ The trial court granted the State's motion to withdraw the allegation that Defendant acted to promote or assist a criminal street gang.

made their closing arguments. The jury, after weighing the evidence, determining credibility and deciding the facts, found Defendant guilty of threatening or intimidating conduct toward Officer Neuhaus and also found that he was a member of the West Side City Crips, a criminal street gang. The jury, however, acquitted him of the other two counts.

¶6 There was a sentencing hearing on September 1, 2010, and the trial court found that Defendant had five prior felony convictions beyond a reasonable doubt. After presentation of aggravating and mitigating factors, Defendant was sentenced to an aggravated prison term of four years and given presentence incarceration credit for 85 days.

¶7 A notice of appeal was filed, and 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) (2010), 13-4031, and -4033(A)(1) (2010).

DISCUSSION

¶8 We have read the entire record of the trial, the pleadings, and the trial court's rulings. We have also considered counsel's brief. We have found no reversible error. See *Leon*, 104 Ariz. at 300, 451 P.2d at 881. All of the proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure. The record, as presented, reveals that Defendant was represented by counsel at all stages of the

proceedings, the jury was properly instructed, and the sentence imposed was within the statutory limits.

CONCLUSION

¶9 After this decision has been filed, counsel's obligation to represent Defendant in this appeal has ended. Counsel need do no more than inform Defendant of the status of the appeal and Defendant's future options, unless counsel's review reveals an issue appropriate for submission to the Arizona Supreme Court by petition for review. See *State v. Shattuck*, 140 Ariz. 582, 585, 684 P.2d 154, 157 (1984). Defendant can, if desired, file a motion for reconsideration or petition for review pursuant to the Arizona Rules of Criminal Procedure.

¶10 Accordingly, we affirm Defendant's conviction and sentence.

/s/

MAURICE PORTLEY, Presiding Judge

CONCURRING:

/s/

LAWRENCE F. WINTHROP, Judge

/s/

PATRICK IRVINE, Judge