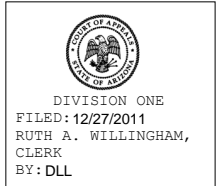


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



STATE OF ARIZONA,) No. 1 CA-CR 11-0368
)
Appellee,) DEPARTMENT B
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
MAGNUS JOEL BUSBY,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. CR2009-125734-001 DT

The Honorable Barbara L. Spencer, Judge *Pro Tem*

AFFIRMED

Thomas C. Horne, Arizona 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 Stephen R. Collins, Deputy Public Defender
Attorney for Appellant

D O W N I E, Judge

¶1 Magnus Joel Busby timely appeals his conviction for attempted acquisition or administration of narcotic drugs in

violation of Arizona Revised Statutes ("A.R.S.") section 13-3408(A)(6). Pursuant to *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), defense counsel has searched the record, found no arguable question of law, and asked that we review the record for fundamental error. See *State v. Richardson*, 175 Ariz. 336, 339, 857 P.2d 388, 391 (App. 1993). Busby did not file a supplemental brief *in propria persona*. On appeal, we view the evidence in the light most favorable to sustaining the conviction. *State v. Tison*, 129 Ariz. 546, 552, 633 P.2d 355, 361 (1981), *cert. denied*, 459 U.S. 882 (1982).

FACTS AND PROCEDURAL HISTORY

¶12 In February 2009, Busby attempted to fill a prescription allegedly signed by Dr. Brett Beloud for hydrocodone pills. The pharmacist, Guadalupe Castillo, found the prescription suspicious. It prescribed over 100 pills, was dated that same day (a Saturday), and did not have a watermark. Castillo told Busby he would have to wait while Castillo called Dr. Beloud to verify the prescription. Dr. Beloud advised Castillo that he did not authorize the prescription.

¶13 When Busby returned, Castillo instructed a technician to call the police. Before officers arrived, Busby left the store. Officers got Busby's name and description and obtained a copy of the pharmacy's surveillance video. A few weeks later,

Castillo identified Busby in a photo lineup. Castillo also identified Busby in the surveillance video.

¶4 Busby was indicted for attempted acquisition or administration of narcotic drugs, a class 4 felony. He was released on his own recognizance. When he failed to appear for his arraignment, the court issued a bench warrant. Busby was arrested and was ultimately released under the supervision of pre-trial services. Although Busby had notice of pre-trial hearing and trial dates, he failed to appear. The court issued another bench warrant, found Busby's absence to be voluntary, and permitted a jury trial in *absentia*.

¶5 Castillo, Dr. Beloud, and the police officers testified. At the conclusion of the State's case-in-chief, defense counsel moved for a judgment of acquittal pursuant to Rule 20, Arizona Rules of Criminal Procedure ("Rule"). The motion was denied. The jury found Busby guilty as charged. Busby was sentenced to a mitigated term of 8 years' imprisonment, with 126 days of pre-sentence incarceration credit.¹

¹ Busby was in custody from October 10, 2009, to December 1, 2009, and April 12, 2010, to June 23, 2010 -- the day he was sentenced, totaling 125 days. The court credited him with 126 days. Because the State has not appealed, we will not disturb the calculation. See *State v. Lee*, 160 Ariz. 323, 324, 772 P.2d 1176, 1177 (App. 1989) (failure by State to appeal an incorrect pre-sentence incarceration credit waives the error).

DISCUSSION

¶16 We have read and considered the briefs submitted by counsel and have reviewed the entire record. *Leon*, 104 Ariz. at 300, 451 P.2d at 881. We find no fundamental error. All of the proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure, and the sentence imposed was within the statutory range. Busby had notice of all court dates and was represented by counsel. The jury was properly impaneled and instructed. The jury instructions were consistent with the offenses charged. The record reflects no irregularity in the deliberation process.

¶17 The trial court properly denied the Rule 20 motion. A judgment of acquittal is appropriate only when there is "no substantial evidence to warrant a conviction." Ariz. R. Crim. P. 20. Substantial evidence is such proof that "reasonable persons could accept as adequate and sufficient to support a conclusion of defendant's guilt beyond a reasonable doubt." *State v. Mathers*, 165 Ariz. 64, 67, 796 P.2d 866, 869 (1990) (citations omitted). "Reversible error based on insufficiency of the evidence occurs only where there is a complete absence of probative facts to support the conviction." *State v. Soto-Fong*, 187 Ariz. 186, 200, 928 P.2d 610, 624 (1996).

¶18 The State presented substantial evidence of guilt. A person commits acquisition or administration of a narcotic drug

when he "knowingly . . . [o]btain[s] or procure[s] the administration of a narcotic drug by fraud, deceit, misrepresentation or subterfuge." Ariz. Rev. Stat. ("A.R.S.") § 13-3408(A)(6). Hydrocodone is a narcotic drug. A.R.S. § 13-3401(20)(iii), (21)(n). An attempt occurs when a person "[i]ntentionally does . . . anything which, under the circumstances as such person believes them to be, is any step in a course of conduct planned to culminate in commission of an offense." A.R.S. § 13-1001(A)(2).

¶9 Castillo testified that Busby attempted to fill a prescription for hydrocodone allegedly authorized by Dr. Beloud. The prescription slip contained Dr. Beloud's name and his forged signature. Dr. Beloud testified that he never authorized such a prescription for Busby. Castillo identified Busby on the pharmacy's surveillance video and in a photo lineup as the person who presented the fraudulent prescription. The evidence presented was sufficient to support the jury's verdict.

CONCLUSION

¶10 We affirm Busby's conviction and sentence. Counsel's obligations pertaining to Busby's representation in this appeal have ended. Counsel need do nothing more than inform Busby 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).

On the court's own motion, Busby shall have 30 days from the date of this decision to proceed, if he desires, with an *in propria persona* motion for reconsideration or petition for review.

/s/

MARGARET H. DOWNIE,
Presiding Judge

CONCURRING:

/s/

PETER B. SWANN, Judge

/s/

DONN KESSLER, Judge