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

FILED BY CLERK
FEB 14 2013
COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

HARRY EMERSON RAMSEY,
Appellant.

2 CA-CR 2012-0234
DEPARTMENT A

MEMORANDUM DECISION
Not for Publication
Rule 111, Rules of
the Supreme Court

APPEAL FROM THE SUPERIOR COURT OF COCHISE COUNTY

Cause No. CR201100313

Honorable Wallace R. Hoggatt, Judge

AFFIRMED

Daniel J. DeRienzo — Prescott Valley
Attorney for Appellant

E C K E R S T R O M, Presiding Judge.

¶1 After a bench trial, appellant Harry Ramsey was convicted of transportation of at least two pounds of marijuana for sale. Appointed counsel has filed a brief on appeal, pursuant to *Anders v. California*, 386 U.S. 738 (1967), and *State v Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), asserting he has "searched the record on appeal . . . for error or arguable questions of law, but has found none." He asks this court to search the record for reversible error. Ramsey has been given an opportunity to file a supplemental brief but has chosen not to do so.

¶2 Ramsey filed a motion to suppress the marijuana found in his car on the ground that he had been detained unlawfully and the search of his car had been unconstitutional. He also filed a motion to suppress "all pre-trial statements made by him" because they were involuntary and had been taken in violation of *Miranda v. Arizona*, 384 U.S. 436 (1966). The trial court denied the motions after an evidentiary hearing. Ramsey waived his right to a jury trial, and the bench trial was held immediately after the evidentiary hearing on the motions. The parties stipulated that the case would be submitted to the court based on the records, photographs, and reports included in the state's six exhibits admitted for trial and that the court also could consider the "facts presented during the motions hearing." Viewed in the light most favorable to sustaining the conviction, *see State v. Rienhardt*, 190 Ariz. 579, 588-89, 951 P.2d 454, 463-64 (1997), the evidence before the court was "[s]ubstantial evidence," or "proof that 'reasonable persons could accept as adequate and sufficient to support a conclusion of defendant's guilt beyond a reasonable doubt.'" *State v. DiGiulio*, 172 Ariz. 156, 159, 835 P.2d 488, 491 (App. 1992), *quoting State v. Mathers*, 165 Ariz. 64, 67, 796 P.2d 866, 869

(1990). The evidence supported the finding that Ramsey had just over ninety-two pounds of marijuana in his car at the time he was stopped by a Department of Public Safety officer for driving in excess of the lawful speed limit and that he therefore had transported two pounds or more of marijuana for the purpose of selling it, in violation of A.R.S. § 13-3405(A)(4) and (B)(11). *See* A.R.S. § 13-3401(4), (19), (32) (defining cannabis, marijuana, and sale, respectively).

¶3 Additionally, the four-year prison term the trial court imposed on Ramsey was the minimum term for this class two felony. *See* A.R.S. § 13-702(D). The sentence not only was lawful, but the record before us establishes it was imposed in a lawful manner. *See* Ariz. R. Crim. P. 24.3 cmt. (distinguishing unlawful from unlawfully imposed sentence, noting "[a]n unlawful sentence is one not authorized by law [whereas] a sentence imposed in an unlawful manner is one imposed without due regard to the procedures required by statute or Rule 26," Ariz. R. Crim. P.); *State v. Vargas-Burgos*, 162 Ariz. 325, 326, 783 P.2d 264, 265 (App. 1989) (trial court has discretion to impose sentence only within statutory limits); *see also State v. Dawson*, 164 Ariz. 278, 281, 792 P.2d 741, 744 (1990) ("[F]ailure to impose a sentence in conformity with the mandatory provisions of the sentencing statute makes that sentence 'illegal' . . . ."). The court considered the presentence report, portions of which defense counsel corrected and clarified at the sentencing hearing, and other relevant evidence before it, which the court specified had included information it had acquired during the evidentiary hearing on Ramsey's motions.

¶4 After reviewing the record as requested, including the record related to sentencing, we have found no error that can be characterized as fundamental, prejudicial error. *See State v. Fuller*, 143 Ariz. 571, 575, 694 P.2d 1185, 1189 (1985) (interpreting *Anders* and *Leon* to require appellate court to search record for fundamental error). We therefore affirm Ramsey's conviction and the sentence imposed.

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Judge*

*A retired judge of the Arizona Court of Appeals authorized and assigned to sit as a judge on the Court of Appeals, Division Two, pursuant to Arizona Supreme Court Order filed December 12, 2012.