

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

APR 15 2013

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2012-0285
)	DEPARTMENT B
Appellee,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
DARRELL KEITH CROMWELL,)	the Supreme Court
)	
Appellant.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20070563

Honorable Richard D. Nichols, Judge

AFFIRMED

Lori J. Lefferts, Pima County Public Defender
By Eva A. Graham

Tucson
Attorneys for Appellant

V Á S Q U E Z, Presiding Judge.

¶1 Following a jury trial in absentia, appellant Darrell Cromwell was convicted of five counts of sale of a narcotic drug, based on his having sold narcotics on five different dates alleged in the indictment. After he was returned to custody,¹ the trial court sentenced him to a “slightly mitigated” term of 3.25 years’ imprisonment on each count, to be served concurrently. Counsel has filed a brief in compliance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999), stating she “has reviewed the entire record and is unable to find any arguable legal issues to raise on appeal.” Counsel has asked us to search the record for reversible error. Cromwell has not filed a supplemental brief.

¶2 Viewed in the light most favorable to sustaining the verdicts, the evidence was sufficient to support the jury’s findings of guilt. *See State v. Tamplin*, 195 Ariz. 246, ¶ 2, 986 P.2d 914, 914 (App. 1999). The evidence presented at trial showed that, on each of the alleged dates, Cromwell had sold crack cocaine to an undercover police officer.²

¹Although Cromwell delayed sentencing for nearly five years by absconding before trial, our statute prohibiting certain appeals by fugitives, A.R.S. § 13-4033(C), does not bar this appeal. As we explained in *State v. Bolding*, that law applies “only if the defendant has been informed he could forfeit the right to appeal if he voluntarily delays his sentencing for more than ninety days.” 227 Ariz. 82, ¶ 20, 253 P.3d 279, 285 (App. 2011). Cromwell absconded in May 2007, nearly a year before § 13-4033(C) was enacted or became effective, indicating he never was informed of the later-enacted consequence of absconding. *See* 2008 Ariz. Sess. Laws, ch. 25, § 1; *State v. Soto*, 225 Ariz. 532, ¶ 2, 241 P.3d 896, 896 (2010) (§ 13-4033(C) effective September 26, 2008). Nothing in the record suggests such a warning was provided. Therefore, § 13-4033(C) is inapplicable, and we consider Cromwell’s appeal.

²The jury failed to reach a verdict on four other charges alleged in the indictment.

We further conclude the sentences were imposed lawfully and within the statutory limits.
A.R.S. §§ 13-702(D); 13-3408(A)(7), (B)(7).³

¶3 Pursuant to our obligation under *Anders*, we have searched the record for fundamental, reversible error and have found none. Therefore, Cromwell’s convictions and sentences are affirmed.

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

CONCURRING:

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, 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.

³The Arizona criminal sentencing code has been renumbered, effective “from and after December 31, 2008.” *See* 2008 Ariz. Sess. Laws, ch. 301, §§ 1-120. For ease of reference and because no changes in the statutes are material to the issues in this case, *see id.* § 119, we refer in this decision to the section numbers currently in effect.