IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

ROY LEE VAUGHN,
Appellant.

No. 2 CA-CR 2015-0051
Filed August 13, 2015

Appeal from the Superior Court in Pinal County
No. S1100CR201301737
The Honorable Boyd T. Johnson, Judge

AFFIRMED

COUNSEL

Heard Law Firm, Mesa
By James L. Heard
Counsel for Appellant

MEMORANDUM DECISION

Chief Judge Eckerstrom authored the decision of the Court, in which Presiding Judge Miller and Judge Espinosa concurred.

E C K E R S T R O M, Chief Judge:

¶1 Following a jury trial, appellant Roy Vaughn was convicted of resisting arrest, failure to notify the sheriff of his change of address, and aggravated assault of a peace officer. The trial court found Vaughn had two historical prior felony convictions and sentenced him to concurrent prison terms, the longest of which is ten years, with ninety-one days of presentence incarceration credit.

¶2 Counsel has filed a brief citing *Anders v. California*, 386 U.S. 738 (1967), and *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999), asserting he has reviewed the record but found "no arguable issues for appeal." Consistent with *Clark,* 196 Ariz. 530, ¶ 32, 2 P.3d at 97, he has provided "a detailed factual and procedural history of the case with citations to the record" and has asked this court to search the record for fundamental error. Vaughn has filed a supplemental brief.

¶3 Viewing the evidence in the light most favorable to sustaining the jury's verdicts, *see State v. Tamplin*, 195 Ariz. 246, ¶ 2, 986 P.2d 914, 914 (App. 1999), the evidence established that on October 8, 2013, Vaughn "shoved" a police officer who had responded to a call involving a domestic disturbance, causing the officer to feel unsafe and a need to protect himself. The officer, who was wearing a police uniform and had arrived in a marked police vehicle, attempted "[t]o subdue [Vaughn] and place him in handcuffs and under arrest"; Vaughn resisted the officer's efforts. Vaughn, who was required to register as a sex offender, had failed to notify the sheriff of his new address within the required time period. We conclude ample evidence supported the jury's findings of guilt, *see* A.R.S. §§ 13-1203, 13-1204(A)(8)(a), 13-2508(A)(2),

13-3821(A), 13-3822(A), 13-3824(A), and the sentences are within the statutory limits and were imposed properly, *see* A.R.S. § 13-703.[1]

¶4 In his supplemental brief, Vaughn argues the state "knowingly present[ed] inaccurate information" regarding his failure to notify the sheriff that his address had changed, as he was required to do under § 13-3822(A). At trial, a Pinal County Sheriff's Office detective testified that he had been unable to find any records showing Vaughn had registered between March 24, 2008 and October 10, 2013. However, the custodian of records for the Arizona Department of Public Safety testified that Vaughn had registered his address as follows: on May 13 (or 15), 2002, as "homeless"; on April 24, 2003, at the Arizona Department of Corrections in Florence; on April 24, 2008, at 129 W. Elm Ave., Coolidge, Arizona; on January 4, 2013, at the Arizona Department of Corrections in Florence; on October 10 (or 16), 2013, at 129 W. Elm Ave., Coolidge, Arizona; and, on May 24, 2014, at 129 W. Elm Ave., Coolidge, Arizona.

¶5 Vaughn argues that the custodian's testimony shows not only that the detective had attempted to mislead the jury, but that the Elm Avenue address, where the underlying incident occurred, was listed as "his address" on "all of his registration records." The record, however, clearly belies Vaughn's argument. The custodian's testimony and the related exhibits established not only that Vaughn did not consistently report having lived at the Elm Avenue address, but that his last registered address before his arrest on October 8, 2013, was the Arizona Department of Corrections. Additionally, to the extent Vaughn claims the state knowingly presented inaccurate information through the detective's testimony, Vaughn does not point to any evidence establishing the detective made any intentional misrepresentations. Moreover, it is the jury's province to weigh the evidence and to determine the credibility of the witnesses. *See State v. Parker*, 231 Ariz. 391, ¶ 73, 296 P.3d 54,

[1]We refer to the statutes in effect at the time of Vaughn's offenses. *See* 2013 Ariz. Sess. Laws, ch. 55, § 3; 2012 Ariz. Sess. Laws, ch. 23, § 1; 2011 Ariz. Sess. Laws, ch. 90, § 6.

70-71 (2013). We thus reject the issue Vaughn raised in his supplemental brief.

¶6 In reviewing the record for fundamental error, we have discovered a discrepancy between the oral pronouncement at sentencing and the written sentencing order regarding count four. As background, the first indictment charged Vaughn with aggravated assault of a peace officer, a class six felony, while the second indictment, filed a year later, correctly charged this offense as a class five felony. The transcript of Vaughn's sentencing hearing indicates that the trial court stated Vaughn had been convicted of aggravated assault, a class five felony, and imposed a five-year sentence, the presumptive sentence for this class of offense. *See* § 13-703(J). However, although the written sentencing order states Vaughn was convicted of a class five felony, it imposes a 3.75-year sentence, the presumptive term for a class six felony. *See id*. It appears based on the record and the applicable statute that this is a class five felony, *see* § 13-1204(A)(8)(a), (D), (E), a fact Vaughn and his attorney seem to acknowledge on appeal. But, because the 3.75-year sentence imposed in the written sentencing order falls within the legal sentencing range for a class five felony, *see* § 13-703(J), and because any action we might take to resolve the conflict between the two sentences would be to Vaughn's detriment, we will not disturb the court's written sentencing order or address whether it reflects the true sentence imposed for count four. *See State v. Dawson,* 164 Ariz. 278, 281-82, 792 P.2d 741, 744-45 (1990) (noting state's failure to appeal or cross-appeal deprives court of jurisdiction to change sentence to defendant's detriment).

¶7 Pursuant to our obligation under *Anders,* we have searched the record for fundamental, reversible error and have found none. *See State v. Fuller,* 143 Ariz. 571, 575, 694 P.2d 1185, 1189 (1985). And we have rejected the claim raised in Vaughn's supplemental brief. Therefore, we affirm Vaughn's convictions and sentences.