IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

STEPHANIE LYNN MARTINEZ,
Appellant.

No. 2 CA-CR 2015-0187
Filed May 26, 2016

Appeal from the Superior Court in Pima County
No. CR20133639001
The Honorable Howard Fell, Judge Pro Tempore

AFFIRMED AS CORRECTED

COUNSEL

Mark Brnovich, Arizona Attorney General
Joseph T. Maziarz, Section Chief Counsel, Phoenix
By David A. Sullivan, Assistant Attorney General, Tucson
Counsel for Appellee

Steven R. Sonenberg, Pima County Public Defender
By Frank P. Leto, Assistant Public Defender, Tucson
Counsel for Appellant

MEMORANDUM DECISION

Presiding Judge Howard authored the decision of the Court, in which Judge Espinosa and Judge Staring concurred.

H O W A R D, Presiding Judge:

¶1 After a jury trial, appellant Stephanie Martinez was convicted of possession of methamphetamine, possession of marijuana, and possession of drug paraphernalia. The trial court found she had one historical prior felony conviction and sentenced her to concurrent prison terms, the longest of which is three years.[1]

¶2 Counsel has filed a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), and *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999), avowing he has reviewed the record and found no issue to raise on appeal. Consistent with *Clark*, 196 Ariz. 530, ¶ 32, 2 P.3d at 97, he has provided a factual and procedural history of the case with citations to the record, and he asks this court to search the record for error. Martinez has not filed a pro se supplemental brief.

¶3 We view the evidence in the light most favorable to sustaining the jury's verdicts. *State v. Tamplin*, 195 Ariz. 246,¶ 2, 986 P.2d 914, 914 (App. 1999). So viewed, the evidence established that a Tucson police officer responded to a report that a motel guest had stayed beyond the paid rental and was refusing to leave, and he found Martinez alone in the room, surrounded by packed boxes and bags. The officer discovered a plastic bag containing methamphetamine in the motel room and placed Martinez under arrest. He and another officer then searched the packed items and found more methamphetamine, marijuana, and a methamphetamine

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[1] On the marijuana and drug paraphernalia convictions, Martinez rejected the opportunity for probation pursuant to A.R.S. § 13-901.01. *See* § 13-901.01(H)(3).

pipe. We conclude substantial evidence supported the jury's verdicts. *See* A.R.S. §§ 13-3405(A)(1), 13-3407(A)(1), 13-3401(6)(c)(xxxviii), and 13-3415(A). And Martinez's sentences are within the authorized range. *See* A.R.S. § 13–703(B), (I).

¶4 We requested supplemental briefing to resolve some apparent discrepancies between the trial court's oral pronouncement of sentence on May 4, 2015, its sentencing minute entry, and an "amended minute entry" filed on May 20, 2015. At sentencing, the court found the state had proven Martinez had one historical prior conviction and stated its intent to sentence her for "a Class 4 felony with one historical prior [and] two Class 6 felonies with one historical prior." The court then found that "mitigating factors outweigh[ed]" the aggravating factor of her prior conviction and sentenced Martinez to concurrent, "mitigated" terms of imprisonment of three years for the methamphetamine possession, a class four felony, and one year each for possession of marijuana and possession of drug paraphernalia, both class six felonies. The minute entry for the sentencing hearing, however, identified the offenses as "nonrepetitive," and it did not specify whether the sentences had been presumptive, aggravated or mitigated under the relevant sentencing statute.

¶5 On May 20, 2015, the trial court ordered that its sentencing minute entry be amended to reflect that it had sentenced Martinez to a maximum term of three years for the methamphetamine offense, identifying her prior criminal conviction as an aggravating circumstance, and to presumptive terms of one year each for the other two offenses. The court stated its earlier sentencing minute entry would "remain in full force and effect in all other respects." In his opening brief, Martinez's counsel reported the court's amendment, stating, "The belated reason for the maximum sentence was [Martinez]'s prior conviction," and concluding, "[T]he Court properly corrected the minute entry of sentencing changing the mitigated sentence to an aggravated sentence under *State v. Suniga*, 145 Ariz. 389, 395, 701 [P.2d 1197, 1203 (App. 1985)]." We requested supplemental briefing on the following issues: "(1) Whether the trial court erred in amending the defendant's sentence, outside of her presence, to reflect the

imposition of a maximum term of imprisonment; and (2) If so, the appropriate remedy."

¶6 In their supplemental briefs, Martinez and the state concur that the three-year term of imprisonment was the "minimum" term for the methamphetamine conviction for a "category two" repetitive offender like Martinez, pursuant to A.R.S. 13-703(B) and (I). The state suggests the trial court thus "misspoke" at sentencing "when it labeled the three-year prison term for possession of a dangerous drug the 'mitigated' sentence," and, in its amended minute entry, "inaccurately labeled this sentence as the 'maximum' sentence."[2] Similarly, Martinez characterizes "[t]he court's incorrect notation [of a] 'maximum' sentence" in its amended minute entry as a "clerical error" that may be corrected by modification of the original minute entry.

¶7 We may correct the minute entry without remand if "the record clearly identifies the intended sentence." *State v. Veloz*, 236 Ariz. 532, ¶ 21, 342 P.3d 1272, 1278 (App. 2015). In light of the parties' agreement that the trial court clearly intended to impose a minimum term of three years for the methamphetamine offense, we do so here.

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[2]Under § 13-703(I), the permissible sentences for a category two repetitive offender convicted of a class four felony are denominated as follows: Mitigated: 2.25 years, Minimum: three years, Presumptive: 4.5 years, Maximum: six years, and Aggravated: 7.5 years. We recognize that this nomenclature is confusing; both a mitigated and minimum sentence may be described as "mitigated" when compared to a presumptive term, just as both an aggravated and maximum sentence are "aggravated" beyond a presumptive sentence. *See*, *e.g.*, § 13-703(D) (providing presumptive term set by § 13-703 "may be aggravated or mitigated within the range under this section pursuant to [A.R.S.] § 13-701, subsections C, D and E"); *see also* 13-701(C)–(E) (pertaining to imposition of "minimum" and "maximum" terms).

¶8 In our examination of the record pursuant to *Anders*, we have found no other error or arguable issue warranting further appellate review. *See Anders*, 386 U.S. at 744. Accordingly, we vacate the trial court's May 20, 2015 "Amended Minute Entry"; correct the court's original sentencing minute entry to reflect the imposition of minimum sentences for a category two repetitive offender, for reasons stated on the record at sentencing;[3] and affirm Martinez's convictions and sentences, as corrected.

[3] Pursuant to § 13-703(I), Martinez was sentenced to the minimum term for all offenses, notwithstanding the suggestion, in her supplemental brief, that her sentences for the marijuana and drug paraphernalia convictions are correctly characterized as "presumptive."