

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

MICHAEL RENNIE CARTER,
Appellant.

No. 2 CA-CR 2016-0331
Filed July 25, 2017

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION

See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.24.

Appeal from the Superior Court in Pinal County
No. S1100CR201402375
The Honorable Joseph R. Georgini, Judge

AFFIRMED

COUNSEL

Harriette P. Levitt, Tucson
Counsel for Appellant

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MEMORANDUM DECISION

Chief Judge Eckerstrom authored the decision of the Court, in which Presiding Judge Vásquez and Judge Kelly¹ concurred.

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

¶1 After a jury trial held in his absence, Michael Carter was convicted of possession of methamphetamine. The trial court sentenced him to a 4.5-year prison term.

¶2 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), asserting she reviewed the record but found no arguably meritorious issue to raise on appeal. Consistent with *Clark*, 196 Ariz. 530, ¶ 32, 2 P.3d at 97, she provided “a detailed factual and procedural history of the case with citations to the record” and asked this court to search the record for error. Carter has filed a supplemental brief asserting the trial court erred in permitting his trial to proceed in his absence.

¶3 Viewing the evidence in the light most favorable to sustaining the jury’s verdict, *see State v. Tamplin*, 195 Ariz. 246, ¶ 2, 986 P.2d 914, 914 (App. 1999), sufficient evidence supports the verdict here. In June 2013, during a search incident to arrest, a police officer found in Carter’s pocket a baggie containing .78 grams of methamphetamine. A.R.S. §§ 13-3401(6)(c)(xxxviii), 13-3407(A)(1). His sentence is within the statutory range and was properly imposed. A.R.S. §§ 13-703(B), (I), 13-1407(B)(1).

¹The Hon. Virginia C. Kelly, a retired judge of this court, is called back to active duty to serve on this case pursuant to orders of this court and our supreme court.

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¶4 In his supplemental brief, Carter argues he was deprived of his constitutional right to be present at trial, asserting his attorney “never instructed” him to be present. A defendant has a constitutional right to be present for trial, but may voluntarily relinquish the right to attend. *State v. Garcia-Contreras*, 191 Ariz. 144, ¶¶ 8-9, 953 P.2d 536, 538-39 (1998). A trial court “may infer that an absence is voluntary if the defendant had personal notice of the time of the proceeding, the right to be present at it, and a warning that the proceeding would go forward in his or her absence should he or she fail to appear.” Ariz. R. Crim. P. 9.1. Carter was informed in open court of his trial date and time, and warned that trial would proceed in his absence. Thus, the court was free to infer his absence was voluntary.

¶5 Pursuant to our obligation under *Anders*, we have searched the record for fundamental, reversible error and found none. *See State v. Fuller*, 143 Ariz. 571, 575, 694 P.2d 1185, 1189 (1985) (stating *Anders* requires court to search record for fundamental error). Accordingly, we affirm Carter’s conviction and sentence.