

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

JUL 16 2010

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

THE STATE OF ARIZONA,	)	2 CA-CR 2009-0139
	)	DEPARTMENT B
	)	
Appellee,	)	<u>MEMORANDUM DECISION</u>
	)	Not for Publication
v.	)	Rule 111, Rules of
	)	the Supreme Court
MICHAEL HUDG FRANCIS,	)	
	)	
Appellant.	)	
_____	)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20074202

Honorable Howard Hantman, Judge

AFFIRMED

Emily Danies

Tucson  
Attorney for Appellant

ECKERSTROM, Judge.

¶1 Appellant Michael Francis was convicted after a jury trial of transportation of over two pounds of marijuana for sale. The trial court sentenced him to a mitigated prison term of four years. 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), avowing she has found “[n]o arguable question of law” and requesting that this court search the entire record for fundamental error.

¶2 Francis has filed a supplemental brief in which he has raised various issues that relate to the broader claim of ineffective assistance of trial counsel. But we do not address claims of ineffective assistance of counsel on direct appeal. *See State v. Spreitz*, 202 Ariz. 1, ¶ 9, 39 P.3d 525, 527 (2002). Such claims must be presented to the trial court in a petition for post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P. *Spreitz*, 202 Ariz. 1, ¶ 9, 39 P.3d at 527.

¶3 Francis also contends the trial court violated his due process rights “as well as law under Arizona Rules of Criminal Procedure, 31.9(c)[,] Rule 14.3(e)[, and] Rule 31.9[,] Federal Rules of Appellate Procedure.” He complains that this court granted the court reporter multiple extensions of the time for filing the transcripts in this case, which violated rules of procedure and his rights under the Fifth, Sixth, Eighth, and Fourteenth Amendments, including his rights to due process and “fundamental fairness.” Rule 31.9(c), Ariz. R. Crim. P., does limit the number of extensions that may be granted to the clerk of the superior court for transmitting the record on appeal pursuant to Rule 31.9(a), but it does not apply to the filing of transcripts. Rule 31.8 applies to the preparation and filing of transcripts, and Rule 31.8(d)(1), states, “The authorized transcriber shall prepare the certified transcript promptly upon receipt of a notice of appeal . . . .”

¶4 Upon the filing of an affidavit by the court reporter, in June 2009 this court granted one extension of time for filing the transcripts from the three-day jury trial. After the reporter had filed the transcripts of the trial and sentencing proceedings, this court ordered her to prepare transcripts from the two days of hearings on Francis’s motion to suppress. The superior court had not served the reporter with notice requiring preparation

of these transcripts. In October, this court extended the time for filing the suppression hearing transcripts. On November 4, 2009, this court entered its order acknowledging all transcripts had been filed and the record was complete.

¶5 This court “may issue such orders in aid of the proceedings as it deems necessary,” Ariz. R. Crim. P. 31.17, and has done so here without unreasonably delaying the processing of Francis’s appeal. *See also* Ariz. R. Crim. P. 31.20 (appellate court “may suspend the requirements of any section of Rule 31, and may substitute any other appropriate order of proceedings”). And Francis has cited no authority to support his assertion that his constitutional rights or his rights under the applicable procedural rules have been violated.

¶6 We have reviewed the entire record for fundamental, reversible error and have found none. The record supports the jury’s verdict, and the mitigated prison term is within statutory parameters and was imposed in a lawful manner. Therefore, we affirm the conviction and the sentence.

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

CONCURRING:

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

/s/ Virginia C. Kelly  
VIRGINIA C. KELLY, Judge