

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.

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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	
)	
Appellee,)	2 CA-CR 2009-0053
)	DEPARTMENT B
v.)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
CARL CHRISTOPH BUTLER,)	Rule 111, Rules of
)	the Supreme Court
Appellant.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF COCHISE COUNTY

Cause No. CR200700479

Honorable James L. Conlogue, Judge

AFFIRMED

Jeffrey G. Buchella

Tucson
Attorney for Appellant

B R A M M E R, Judge.

¶1 Appellant Carl Christoph Butler was indicted in July 2007 for possessing less than 750 milligrams of cocaine, a class four felony, and possessing drug paraphernalia, a class six felony. After the trial court denied his two pretrial motions to suppress evidence

following an evidentiary hearing, an eight-person jury found Butler guilty of both counts as charged. The court found he had one historical prior felony conviction but further found the amount of cocaine involved in this case made probation mandatory pursuant to A.R.S. § 13-901.01(A). Accordingly, the court suspended the imposition of sentence and placed Butler on standard probation for a period of four years.

¶2 Appellate counsel has filed a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), stating he has reviewed the record and “researched applicable legal issues” without finding any meritorious issue for appeal. Counsel has suggested three arguable issues¹ and asks us to search the record for reversible error pursuant to *Anders* and *Leon*. Butler has not filed a supplemental brief.

¶3 We have examined the record pursuant to our obligation under *Anders* and have considered counsel’s arguable issues. We have found in the record substantial evidence supporting each element necessary to the jury’s verdicts. Among the witnesses who testified at trial was the Sierra Vista police officer who had arrested Butler in June 2007 pursuant to an outstanding arrest warrant. The officer identified Butler in court as the person he had arrested and described having found in one of Butler’s pants pockets a plastic sandwich bag containing two “rocks” of what appeared to be cocaine. A Department of Public Safety

¹The arguable issues counsel posits are whether the trial court erred or abused its discretion in denying Butler’s motion to suppress, whether Butler was subjected to unlawful pretrial incarceration in this case, and whether the court committed fundamental error by imposing a discretionary surcharge in addition to Butler’s \$2,000 fine for drug possession.

criminalist testified that she had tested the substance found in the plastic bag and determined it to be .66 grams of cocaine base. And Butler's four-year term is an appropriate probationary term pursuant to A.R.S. §§ 13-901(B) and 13-902(A)(3) for his class four felony conviction.

¶4 Having searched the record for fundamental error and found none, we affirm Butler's convictions and the fines, fees, surcharges, and probationary term imposed.

J. WILLIAM BRAMMER, JR., Judge

CONCURRING:

PETER J. ECKERSTROM, Presiding Judge

GARYE L. VÁSQUEZ, Judge