

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz.R.Sup.Ct. 111(c); ARCAP 28(c);
Ariz.R.Crim.P. 31.24



DIVISION ONE
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BY: DN

**IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE**

STATE OF ARIZONA,) 1 CA-CR 09-0104
)
Appellee,) DEPARTMENT C
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
OCTOBER JAMIL HOARD,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2007-142251-001 DT

The Honorable James T. Blomo, Judge Pro Tempore

AFFIRMED

Terry Goddard, Attorney General Phoenix
by Kent E. Cattani, Chief Counsel
Criminal Appeals/Capital Litigation Section
Attorneys for Appellee

Michael J. Dew Phoenix
Attorney for Appellant

October Jamil Hoard Tucson
Appellant

I R V I N E, Judge

¶1 This appeal is filed in accordance with *Anders v. California*, 386 U.S. 738 (1967) and *State v. Leon*, 104 Ariz.

297, 451 P.2d 878 (1969). Counsel for October Jamil Hoard asks this court to search the record for fundamental error. Hoard was given an opportunity to file a supplemental brief in propria persona. Hoard has done so. After reviewing the record, we affirm Hoard's convictions and sentences for possession for sale of narcotic drugs and possession or use of marijuana.

FACTS¹ AND PROCEDURAL HISTORY

¶2 The State originally charged Hoard with count one, possession for sale of narcotic drugs, a class two felony; count two, possession or use of marijuana, a class six felony; and count three, misconduct involving weapons, a class four felony.

¶3 On June 29, 2007, approximately twenty-five police officers went to West Pima Street in Phoenix to serve a narcotics search warrant. Officers had been conducting surveillance on the property for approximately two weeks and on several occasions saw people walk up to the house. These visitors only stayed "for a minute to three minutes tops." Before officers got into position to do a knock-and-announce, Hoard exited the door, attempted to go back inside, and was detained. There was a woman at the residence who was also

¹ "We view the evidence in the light most favorable to sustaining the verdicts and resolve all inferences against [Defendant]." *State v. Nihiser*, 191 Ariz. 199, 201, 953 P.2d 1252, 1254 (App. 1997) (citation omitted).

detained.² After serving the search warrant, officers discovered there was more than one structure on the property.³ They then obtained a search warrant for the additional, "back" structure, which was later determined to have a different address.

¶4 Officers searched the front structure and found it vacant.⁴ They searched the back structure, a single room that appeared to be a converted porch, after obtaining a search warrant. Officers observed several illegal items in plain view. They saw a microwave plate covered in crack cocaine and a razor blade, a baggie of marijuana and a digital scale. Under the couch cushions they located a larger baggie of crack cocaine. Officers discovered two handguns tucked into the couches and two SKS assault rifles on the floor. They found several boxes of ammunition in the kitchen cupboard and two cell phones. On the kitchen counter, they found an APS utility bill made out to Hoard at West Pima Street.

¶5 Police found over \$800 cash in different denominations in Hoard's clothing pockets. The State's expert testified that

² The woman was not charged in this case.

³ Officer C.S. testified he had worked the area for nine years and thought the address was one structure: "[T]o the best of my knowledge, on all of the materials that I reviewed, it was one structure." He testified that on the Maricopa County records website, it showed the address as just one property.

⁴ Officer C.S. testified the front structure had no signs that someone was living there, no clothes, and no plugged-in appliances.

the drugs found included: 20 grams of cocaine base, 6.4 grams of cocaine base,⁵ 3.0 grams of marijuana, and 6.2 grams of marijuana, all in useable condition.

¶6 Hoard testified that he did not live at the residence and had only been to the house four times.⁶ He claimed he was repairing the property and lived at his brother's residence in another part of Phoenix. On the stand, he admitted to having a prior felony conviction.

¶7 At the close of the evidence, the trial court properly instructed the jury on the elements of the offense. Hoard was convicted of count one, possession for sale of narcotic drugs and count two, possession or use of marijuana. The jury was hung on count three, misconduct involving weapons. The court found three prior felony convictions were proven at the conclusion of a prior convictions trial on January 20, 2009. On February 5, 2009, Hoard waived his right to a preliminary hearing and probable cause determination on count four, possession of dangerous drugs for sale (PCP), a class two felony. In a

⁵ The State's expert testified that these amounts of cocaine exceeded the statutory threshold of 750 milligrams.

⁶ Officer C.S.'s testimony contradicted this statement. He testified that Hoard admitted he was living at the residence during Officer C.S.'s previous encounter with him regarding possible zoning violations: "[H]e stated that he was staying in the front house while he fixed it up, and that he would begin paying rent to the property after it was repaired."

separate proceeding, he pled guilty to count three, misconduct involving weapons and count four.

¶18 The trial court conducted the sentencing hearing in compliance with Hoard's constitutional rights and Rule 26 of the Arizona Rules of Criminal Procedure. The trial court sentenced Hoard to a slightly mitigated term of seven years for count one,⁷ a concurrent, presumptive term of 1.75 years for count two, and probation for both counts three and four, concurrent with each other but consecutive to counts one and two. He received 350 days presentence incarceration credit.

DISCUSSION

¶19 We exercise jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1) (2003); 13-4031 (2001); and 13-4033(A)(1) (Supp. 2008). We review Hoard's convictions and sentences for fundamental error. See *State v. Gendron*, 168 Ariz. 153, 155, 812 P.2d 626, 628 (1991). In Hoard's supplemental brief, he requests relief from his plea of guilty in counts three and four. We do not have jurisdiction to review plea agreements. See A.R.S. § 13-4033 (Supp. 2008). Therefore, we review only Hoard's convictions and sentences on counts one and two for fundamental error.

⁷ The court determined a mitigated sentence was appropriate, citing "Mr. H'oard's health problems, [and] the fact that his priors were more than ten years old"

¶10 Counsel for Hoard has advised this court that after a diligent search of the entire record, he has found no arguable question of law. The court has read and considered counsel's brief and fully reviewed the record for reversible error. See *Leon*, 104 Ariz. at 300, 451 P.2d at 881. We find none.

¶11 All of the proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure. At trial, there was sufficient evidence to find Hoard guilty of the charged offenses. So far as the record reveals, Hoard was represented by counsel at all stages of the proceedings. Hoard waived the presentence report. The sentence imposed was within the statutory limits. The trial court correctly credited Hoard with 350 days presentence incarceration credit. Although the record is incomplete regarding the dates on which Hoard was re-incarcerated and released from custody, we must presume the trial court correctly credited Hoard with 350 days of credit. See *State v. Scott*, 187 Ariz. 474, 476, 930 P.2d 551, 553 (App. 1996) ("Even if a trial record is incomplete, we must assume that it supports the judgment unless there is 'at least a credible and unmet allegation of reversible error.'") (citation omitted). We decline to order briefing and we affirm Hoard's convictions and sentences.

¶12 Upon the filing of this decision, defense counsel shall inform Hoard of the status of his appeal and of his future

options. Defense counsel has no further obligations unless, upon review, counsel finds an issue appropriate for submission to the Arizona Supreme Court by petition for review. See *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984). Hoard shall have thirty days from the date of this decision to proceed, if he desires, with a pro per motion for reconsideration or petition for review. On the court's own motion, we extend the time for Hoard to file a pro per motion for reconsideration to thirty days from the date of this decision.

CONCLUSION

¶13 We affirm.

/s/

PATRICK IRVINE, Judge

CONCURRING:

/s/

MARGARET H. DOWNIE, Presiding Judge

/s/

MAURICE PORTLEY, Judge