

COURT OF APPEALS, DIVISION ONE

DOCUMENTS

1 CA-CR 4688

STATE OF ARIZONA

v.

Grant Lee Harman,

( PAGES)

Maricopa COUNTY  
SUPERIOR COURT  
NO. CR-120235

TRANSMITTAL DATE

ORIGINAL

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

STATE OF ARIZONA, )  
 )  
 Appellee, )  
 )  
 v. )  
 )  
 GRANT LEE HARMAN, )  
 )  
 Appellant. )  
 \_\_\_\_\_ )

Nos. 1 CA-CR 6688  
1 CA-CR 6689  
(Consolidated)

Maricopa County  
Superior Court  
Nos. CR-119095 & CR-120235  
(Consolidated)

APPELLANT'S OPENING BRIEF

ROSS P. LEE  
Maricopa County Public Defender

JAMES R. RUMMAGE  
Deputy Public Defender  
Attorney for Appellant  
132 S. Central, 2nd Floor  
Phoenix, Arizona 85004

DIVISION I  
COURT OF APPEALS  
STATE OF ARIZONA

FILED APR 14 1983

GLEN D. CLARK, CLERK  
By *[Signature]*

000030

5-9-83

TABLE OF CONTENTS

	<u>Page</u>
STATEMENT OF THE CASE	1
COMPLIANCE WITH ANDERS V. CALIFORNIA	2

TABLE OF CITATIONS

	<u>Page</u>
Anders v. California, 386 U.S. 738 87 S.Ct. 1396 18 L.Ed.2d 493 (1967)	2
State v. Powell, 5 Ariz. App. 51 423 P.2d 127 (1967)	2
Arizona Revised Statutes § 13-4035	2

## STATEMENT OF THE CASE

Appellant was charged by Indictment filed in CR-119095 on April 22, 1981, with the crime of Attempted Fraudulent Scheme or Artifice, a class 3 felony. (Record on Appeal in CR-119095, p. 1). He was charged by Indictment filed in CR-120235 on June 15, 1981, with the crime of Theft, a class 4 felony. (Record in CR-120235, p. 1). On September 8, 1982, Appellant entered into a plea agreement whereby he pled guilty to the crime charged in each case, and the State agreed to concurrent sentences and agreed not to file allegations of prior convictions. (Record in CR-119095, p. 24).

On November 16, 1982, Appellant testified at a presentence hearing that, among other things, he had sought psychiatric assistance regarding the problem which resulted in the commission of these crimes. He received psychiatric assistance from October, 1981 until April, 1982, when he was arrested on bench warrants in these cases. (Reporter's Transcript, 11/6/82, pp. 14-16; Ex. 1). He was also employed from September, 1981, until his arrest. (R.T., 11/6/82, p. 16).

Following that hearing, the court recited the factors which he considered in determining Appellant's sentences, made a finding that the aggravating circumstances outweighed the mitigating circumstances, and sentenced Appellant to the maximum sentences of 10 years in CR-119095 and 5 years in CR-120235. A timely notice of appeal was filed in each case on November 20, 1982.

COMPLIANCE WITH ANDERS V. CALIFORNIA

Counsel for Appellant has searched the record on appeal pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967). Counsel has reviewed the file for possible grounds of error.

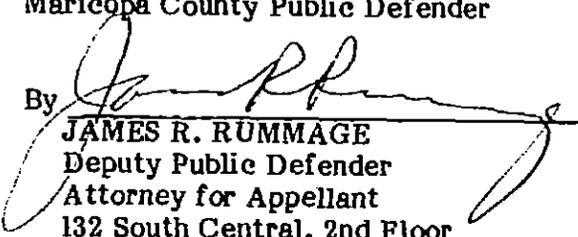
As an arguable issue, it is respectfully submitted that the trial court abused its discretion by imposing the maximum sentences herein. Appellant's sole source of contact with the criminal justice system has been forgery or check-related offenses. At the time of his arrest on the warrants herein, he had been voluntarily undergoing psychiatric therapy in an effort to deal with his problem in this regard. Arguably, in light of Appellant's efforts to correct his behavior, the maximum sentences herein are excessive.

It is respectfully requested that the Court consider the arguable question of law presented and search the record for fundamental error pursuant to A.R.S. §13-4035 and State v. Powell, 5 Ariz. App. 51, 423 P.2d 127 (1967).

Respectfully submitted this 14<sup>th</sup> day of April, 1983.

ROSS P. LEE  
Maricopa County Public Defender

By

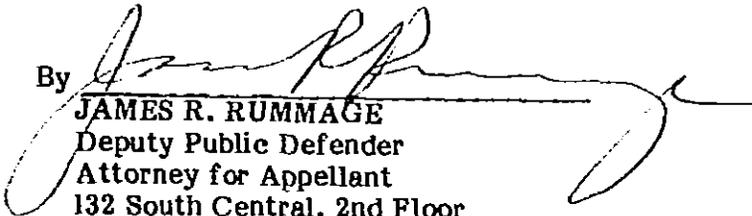
  
JAMES R. RUMMAGE  
Deputy Public Defender  
Attorney for Appellant  
132 South Central, 2nd Floor  
Phoenix, Arizona 85004

TWO COPIES of Appellant's Opening Brief delivered this 14<sup>th</sup> day of April, 1983, to ROBERT K. CORBIN, Attorney General of Arizona, 1275 West Washington, Criminal Division, Second Floor, Phoenix, Arizona, 85007.

ONE COPY of the Appellant's Opening Brief mailed this 14<sup>th</sup> day of April, 1983, to GRANT LEE HARMAN, Arizona Correctional Training Facility, 10000 South Wilmot Road, Santa Rita Unit, Tucson, Arizona 85706.

ROSS P. LEE  
Maricopa County Public Defender

By

  
JAMES R. RUMMAGE  
Deputy Public Defender  
Attorney for Appellant  
132 South Central, 2nd Floor  
Phoenix, Arizona 85004

000025