

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
FILED: 07/17/2012
RUTH A. WILLINGHAM,
CLERK
BY: sls

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

STATE OF ARIZONA,) 1 CA-CR 11-0340
)
Appellee,) DEPARTMENT C
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
JESUS CHAVEZ RUBALCAVA,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2010-154809-001 DT

The Honorable John R. Hannah, Judge

AFFIRMED

Thomas C. Horne, Attorney General Phoenix
By Kent E. Cattani, Chief Counsel
Criminal Appeals/Capital Litigation Division
Attorneys for Appellee

Maricopa County Public Defender Phoenix
By Tennie B. Martin, Deputy Public Defender
Attorneys for Appellant

H O W 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 defendant Jesus Chavez Rubalcava ("Rubalcava") asks this Court to search the record for fundamental error. Rubalcava was given an opportunity to file a supplemental brief in propria persona. Rubalcava has not done so. After reviewing the record, we affirm Rubalcava's conviction and sentence for aggravated assault.

FACTS AND PROCEDURAL HISTORY

¶2 We view the facts in the light most favorable to sustaining the trial court's judgment and resolve all reasonable inferences against Rubalcava. *State v. Fontes*, 195 Ariz. 229, 230, ¶ 2, 986 P.2d 897, 898 (App. 1998). On October 10, 2010, the victim discovered Rubalcava inside her apartment. After demanding money from the victim, Rubalcava grabbed the victim, placed a knife to her face and told her he was going to kill her. At some point, the victim ran to a neighbor's apartment where the police were called. Police found Rubalcava outside the victim's apartment complex. Officers found a butterfly knife on Rubalcava and observed a small cut on the victim's face.

¶3 The State charged Rubalcava with aggravated assault, a class 3 dangerous felony, and burglary in the first degree, a class 2 dangerous felony. The trial court properly instructed the jury on the elements of the offense. At trial, the jury found Rubalcava guilty of aggravated assault and found that the offense was dangerous because it involved the use of a knife.

The jury found Rubalcava not guilty of burglary in the first degree. The trial court conducted the sentencing hearing in compliance with Rubalcava's constitutional rights and Rule 26 of the Arizona Rules of Criminal Procedure. Rubalcava was sentenced to a slightly mitigated term of 6.5 years in prison and credited with 193 days of presentence incarceration.¹

¶14 Rubalcava timely appeals. This Court has jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1) (West 2012),² 13-4031 and -4033(A)(1).

DISCUSSION

¶15 Counsel for Rubalcava advised this Court that after a diligent search of the entire record, she found no arguable question of law.

¶16 We have reviewed counsel's brief and fully reviewed the record for reversible error. See *Leon*, 104 Ariz. at 299, 451 P.2d at 880. We find none. So far as the record reveals, the proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure, Rubalcava was represented by counsel at all stages of the proceedings and the sentence imposed was

¹ Rubalcava should have only received 192 days of presentence incarceration credit - not 193. Because the error favors Rubalcava and the State did not file a cross appeal, we cannot correct the error. See *State v. Dawson*, 164 Ariz. 278, 281-82, 792 P.2d 741, 744-45 (1990).

² Absent material revisions since the date the offense occurred, we cite the current Westlaw version of applicable statutes.

within the statutory limits. We decline to order additional briefing, and we affirm Rubalcava's conviction and sentence.

¶17 Upon the filing of this decision, defense counsel shall inform Rubalcava 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). Rubalcava shall have thirty days from the date of this decision to proceed, if he desires, with a pro se motion for reconsideration or petition for review.

CONCLUSION

¶18 For the forgoing reasons, we affirm Rubalcava's conviction and sentence for aggravated assault

_____/S/_____
RANDALL M. HOWE, Judge

CONCURRING:

_____/S/_____
MICHAEL J. BROWN, Presiding Judge

_____/S/_____
MARGARET H. DOWNIE, Judge