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EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24



DIVISION ONE  
FILED: 08/21/2012  
RUTH A. WILLINGHAM,  
CLERK  
BY: sls

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

STATE OF ARIZONA, ) 1 CA-CR 11-0351  
)  
Appellee, ) DEPARTMENT S  
)  
v. ) **MEMORANDUM DECISION**  
) (Not for Publication -  
ADRIAN BARELA, ) Rule 111, Rules of the  
) Arizona Supreme Court)  
Appellant. )  
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2010-139638-001DT

The Honorable Warren J. Granville, Judge

**AFFIRMED**

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

James J. Haas, Maricopa County Public Defender Phoenix  
By Kathryn L. Petroff, Deputy Public Defender  
Attorneys for Appellant

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W I N T H R O P, Chief Judge

¶1 Adrian Barela ("Appellant") appeals his convictions and sentences for assault, aggravated assault, and threatening or intimidating. Appellant's counsel has filed a brief in

accordance with *Smith v. Robbins*, 528 U.S. 259 (2000); *Anders v. California*, 386 U.S. 738 (1967); and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), stating that she has searched the record on appeal and found no arguable question of law that is not frivolous. Appellant's counsel therefore requests that we review the record for fundamental error. See *State v. Clark*, 196 Ariz. 530, 537, ¶ 30, 2 P.3d 89, 96 (App. 1999) (stating that this court reviews the entire record for reversible error). Although this court granted Appellant the opportunity to file a supplemental brief *in propria persona*, he has not done so.

¶2 We have appellate jurisdiction pursuant to the Arizona Constitution, Article 6, Section 9, and Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1) (West 2012),<sup>1</sup> 13-4031, and 13-4033(A). Finding no reversible error, we affirm.

#### I. FACTS AND PROCEDURAL HISTORY<sup>2</sup>

¶3 On August 5, 2010, the State charged Appellant by information with Counts I and II, aggravated assault, each a class three dangerous felony, in violation of A.R.S. §§ 13-1203 and 13-1204; Count III, aggravated assault, a class six

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<sup>1</sup> We cite the current Westlaw version of the applicable statutes because no revisions material to this decision have since occurred.

<sup>2</sup> We review the facts in the light most favorable to sustaining the verdict and resolve all reasonable inferences against Appellant. See *State v. Kiper*, 181 Ariz. 62, 64, 887 P.2d 592, 594 (App. 1994).

dangerous felony, in violation of A.R.S. §§ 13-1203 and 13-1204; Count IV, threatening or intimidating, a class three felony, in violation of A.R.S. § 13-1202; and Count V, threatening or intimidating, a class six felony, in violation of A.R.S. § 13-1202. In pertinent part, the State alleged that Appellant, a criminal street gang member, used a gun, deadly weapon, or dangerous instrument to threaten or intimidate and cause serious physical injury to the victim in order to promote, further, or assist the interests of a criminal street gang. The State later alleged several aggravating factors, including the presence of an accomplice and the infliction or threatened infliction of serious physical injury.

¶4 At trial, the State presented the following evidence: At approximately 4:00 or 5:00 p.m. on July 28, 2010, the victim was walking home with relatives when Appellant and his parents drove by, and Appellant shouted "MIC" to the victim. The victim shouted an expletive in response, and then returned to his home. The victim testified that he understood "MIC" to mean "Mexicans in Control" and that other criminal street gangs, including "Most Hated" and "Rapping Phoenix" were affiliated with MIC.

¶5 Approximately fifteen minutes after the victim arrived home, cars pulled up to his house and several males emerged, one wielding a shotgun. The victim heard a window in his home break, and he rushed outside to confront the group. Several

members of the group grabbed the victim, restrained him, and pistol-whipped him. Appellant was one of the attackers. During the attack, the group members yelled out "West side MIC hood." The victim estimated that at least ten or eleven persons attacked him, punching and kicking him as well as pistol-whipping him.

¶6 Family members of the victim rushed outside to assist him during the attack, but they were held at gunpoint. The victim testified that the beating ended only after his attackers noticed he was bleeding profusely. Afterward, he was taken to the hospital and needed six stitches.

¶7 A detective from the Phoenix Police Department testified that several of Appellant's tattoos demonstrated his gang affiliation. For example, the detective stated that Appellant's "55" tattoo demonstrated that his gang claimed the area around 55th Avenue. The detective also testified that Appellant's tattoo depicting a skeleton with a bandana was another common gang motif.

¶8 Another detective, who was a member of the gang enforcement unit, testified that Appellant met six of the seven statutory criteria for criminal street gang membership, including self-proclamation when he shouted "MIC" to the victim, and the presence of gang-related tattoos. See A.R.S. § 13-105(9)(a), (e). The detective further testified that "Mexicans

in Control" is a documented criminal street gang closely affiliated with other Phoenix street gangs, including "Most Hated."

¶9 Appellant did not testify at trial. Before the case was submitted to the jury, the court directed a judgment of acquittal as to Counts I and IV. See Ariz. R. Crim. P. 20(a). The jury found Appellant guilty of Counts III, V, and the lesser-included charge of assault, as a class one misdemeanor, as to Count II. The jury also found that Count III was a dangerous offense and that Counts III and V had been committed to promote, further, or assist a criminal street gang. Appellant waived his right to a jury verdict as to the alleged aggravating factors, and pursuant to stipulation, the court found two such factors - the presence of an accomplice and the threat of serious physical injury.

¶10 The trial court sentenced Appellant to concurrent, presumptive terms of 5.25 years' imprisonment in the Arizona Department of Corrections for Count III and four years' imprisonment for Count V.<sup>3</sup> The court also credited Appellant for 284 days of presentence incarceration. Additionally, the court sentenced Appellant to a concurrent term of six months' incarceration in the county jail for Count II, which the court

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<sup>3</sup> Both sentences included a three-year increase based on the jury's finding that the offenses were gang-related. See A.R.S. § 13-714.

offset with his credit for presentence incarceration. Appellant filed a timely notice of appeal.

## II. ANALYSIS

¶11 We have reviewed the entire record for reversible error and find none. See *Leon*, 104 Ariz. at 300, 451 P.2d at 881; *Clark*, 196 Ariz. at 537, ¶ 30, 2 P.3d at 96. The evidence presented at trial was substantial and supports the verdicts, and the sentences were within the statutory limits. Appellant was represented by counsel at all stages of the proceedings and was given the opportunity to speak at sentencing. The proceedings were conducted in compliance with his constitutional and statutory rights and the Arizona Rules of Criminal Procedure.

¶12 After filing of this decision, defense counsel's obligations pertaining to Appellant's representation in this appeal have ended. Counsel need do no more than inform Appellant of the status of the appeal and of his future options, unless counsel's review reveals an issue appropriate for petition for review to the Arizona Supreme Court. See *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984). Appellant has thirty days from the date of this decision to proceed, if he desires, with a *pro per* motion for reconsideration or petition for review.

III. CONCLUSION

¶13 Appellant's convictions and sentences are affirmed.

\_\_\_\_\_/S/\_\_\_\_\_  
LAWRENCE F. WINTHROP, Chief Judge

CONCURRING:

\_\_\_\_\_/S/\_\_\_\_\_  
MARGARET H. DOWNIE, Judge

\_\_\_\_\_/S/\_\_\_\_\_  
JOHN C. GEMMILL, Judge