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See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 7/11/2013
RUTH A. WILLINGHAM,
CLERK
BY: mjt

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) No. 1 CA-CR 11-0789
) 1 CA-CR 12-0063
 Appellee,) (Consolidated)
)
 v.) DEPARTMENT D
)
 DAISY DANIELS,) **MEMORANDUM DECISION**
) (Not for Publication -
 Appellant.) Rule 111, Rules of the
) Arizona Supreme Court)
)
)

Appeal from the Superior Court in Maricopa County
Cause No. CR2011-105725-001 and CR2008-164770-001

The Honorable William L. Brotherton, Judge

AFFIRMED

Thomas C. Horne, Attorney General Phoenix
By Joseph T. Maziarz, Acting Chief Counsel,
Criminal Appeals/Capital Litigation Section
Attorneys for Appellee

Maricopa County Public Defender's Office Phoenix
By Cory Engle, Deputy Public Defender
Attorneys for Appellant

G E M M I L L, Judge

¶1 Daisy Daniels appeals from her conviction for Aggravated Assault, a class 3 dangerous felony, the revocation of her probation in CR2008-164770-001, and the resulting sentences. Daniels' counsel filed briefs in compliance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), stating that he has searched the record and found no arguable question of law and requesting that this court examine the record for reversible error. Daniels has also filed a *pro se* supplemental brief raising several issues. See *State v. Clark*, 196 Ariz. 530, 537, ¶ 30, 2 P.3d 89, 96 (App. 1999). For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 "We view the facts and all reasonable inferences therefrom in the light most favorable to sustaining the convictions." *State v. Powers*, 200 Ariz. 123, 124, ¶ 2, 23 P.3d 668, 669 (App. 2001).

¶3 On February 1, 2011, S. Rodriguez was waiting at a bus stop with her nearly two-year-old son when Daniels approached the bench and gestured to her to move over. Rodriguez moved over with her son and Daniels sat next to them on the bench. Rodriguez's son was crying when Daniels shouted at her that she better stop the child from "hollering" near her. Rodriguez picked the child up and moved him away from Daniels, but told Daniels to not speak to her child that way. Daniels then stood

up and retrieved from her bag a pocket knife, which she opened and swung at Rodriguez. Daniels yelled at Rodriguez, "Don't f[***] with me. I will f[***]ing kill you both." Rodriguez then moved away and called police while Daniels continued to shout at her. Rodriguez testified at trial that she was afraid Daniels was going to injure her or her son. When police arrived, Daniels was belligerent with the officers. The police searched Daniels and found the knife in her pocket.

¶4 The State initially charged Daniels by direct complaint with Disorderly Conduct, a class 6 dangerous felony. The State later obtained a supervening indictment, changing the charge to Aggravated Assault, a class 3 dangerous felony pursuant to Arizona Revised Statutes ("A.R.S.") section 13-1204(A)(2) (Supp. 2012).¹ Daniels pleaded not guilty. The State alleged Daniels had prior felony convictions for purposes of sentencing enhancement. The State also alleged Daniels had committed the present offense while on probation.

¶5 Prior to trial, Daniels moved the court to allow her to represent herself. At a hearing on the motion, the court determined that Daniels knowingly, intelligently, and voluntarily waived her right to counsel. However, the State expressed concerns over Daniels' competency and the court

¹ We cite to the current version of the applicable statute because no revisions material to this decision have since occurred.

ordered that a Rule 11 evaluation be conducted. After Daniels was declared competent, the court again discussed the waiver of counsel with Daniels and again determined that she knowingly, intelligently, and voluntarily waived her right to counsel. Daniels' attorney was then appointed to serve as advisory counsel. However, midway through the trial, Daniels asked that her advisory counsel take over once again as her legal representative.

¶16 Following a six-day trial, a jury found Daniels guilty of Aggravated Assault, a class 3 dangerous felony. On October 14, 2011, the court held a hearing to determine Daniels' prior felony convictions and probation status. The State offered court minute entries and a Department of Corrections "pen pack" to prove Daniels' prior convictions and presented expert testimony linking the fingerprints associated with three of the four convictions to current fingerprints taken from Daniels. The minute entry associated with the oldest conviction did not contain a fingerprint. Daniels' probation officer also testified that Daniels was on probation at the time of the current offense. Based on this evidence and testimony, the court found the defendant had four prior felony convictions committed in 1979, 1990, 1992, and 2008. The court also found the Defendant was on probation for the 2008 conviction at the time of the current offense.

¶17 On November 1, 2011, the court sentenced Daniels as a category two repetitive offender in the current case to the presumptive term of 11.25 years imprisonment in the Arizona Department of Corrections, with presentence incarceration credit of 273 days. In the probation matter, the court found that Daniels was in violation of her probation and sentenced her to a super-mitigated term of 2 years imprisonment, to be served consecutively to her sentence in the current case, with presentence incarceration credit of 452 days.

¶18 Daniels filed a timely notice of appeal in both matters and the cases have been consolidated in this decision. This Court has jurisdiction pursuant to A.R.S. §§ 13-1204 (Supp. 2012), -4031 (2010), and -4033(A)(1) (2010).

DISCUSSION

¶19 Daniels articulates four discernible issues in her supplemental brief. First, Daniels argues that her Fifth Amendment Double Jeopardy rights were violated when she was first charged by direct complaint and then later by supervening indictment. Daniels asserts that this was improper because “[t]here was no new discovery or disclosure” and “[t]he only difference was the name and statute.”

¶10 “The Double Jeopardy Clauses in the United States and Arizona Constitutions prohibit: (1) a second prosecution for the same offense after acquittal; (2) a second prosecution for the

same offense after conviction; and (3) multiple punishments for the same offense." *Lemke v. Rayes*, 213 Ariz. 232, 236, ¶ 10, 141 P.3d 407, 411 (App. 2006). None of these principles apply here. Daniels was prosecuted only once and received only one sentence for the charged offense. Although the State dismissed its initial complaint and obtained a supervening indictment prior to Daniels' preliminary hearing, it was allowed by law to do so. See *Segura v. Cunanan*, 219 Ariz. 228, 234, ¶ 22, 196 P.3d 831, 837 (App. 2008) ("As an alternative to a preliminary hearing, the prosecution may establish probable cause by obtaining an indictment from a grand jury."). Therefore, Daniels' Double Jeopardy rights were not violated.²

¶11 Second, Daniels argues that when the initial complaint was dismissed and preliminary hearing date vacated, she should have been released pursuant to Arizona Rule of Criminal Procedure 5.1. Rule 5.1 provides that a defendant shall be released "[i]f a preliminary hearing has not been commenced within 10 days" of the filing of a complaint. The State filed its initial complaint on February 3, 2011, and then filed its

² This court has also received Daniels' "Motion for Adjusting Sentence and Conviction," filed on May 24, 2013. Daniels appears to again raise the issue of double jeopardy in her motion. We have addressed this issue in this memorandum decision. Daniels also states in her motion, as she does in her supplemental brief, that the victim in her case has a criminal record. As in her brief, this argument is undeveloped and does not constitute a basis for reversal. We therefore deny Daniels' "Motion for Adjusting Sentence and Conviction."

notice and indictment on February 9, 2011, less than ten days after Daniels' initial appearance on the complaint. "A supervening indictment eliminates a defendant's right to a preliminary hearing on a prior complaint." *Segura*, 219 Ariz. at 234, ¶ 22, 196 P.3d at 837. Therefore, once the indictment was filed, Daniels was being held on that basis and was no longer entitled to a preliminary hearing on the initial complaint; nor was she entitled to be released when her preliminary hearing date was vacated.

¶12 Third, Daniels challenges the authenticity of the documents admitted into evidence as proof of her prior felony convictions. Daniels claims the prosecutor forged documents, including the pen pack and a photograph associated with her 1992 conviction. All of the documents the court admitted into evidence are self-authenticating, certified documents and Daniels has presented no evidence or credible argument that the documents are forgeries. Further, Daniels did not object to the documents' authenticity when they were admitted below. We therefore find no error.

¶13 Fourth, Daniels appears to challenge the sufficiency of the evidence supporting her conviction and assert her actual innocence by claiming that she was "wrongfully charged and

convicted" of aggravated assault.³ "When a defendant challenges the sufficiency of the evidence, the court will affirm the conviction if there is substantial evidence to support the guilty verdict." *State v. Guerra*, 161 Ariz. 289, 293, 788 P.2d 1185, 1189 (1989) (internal quotations and citation omitted). Substantial evidence is "such proof as a reasonable mind would employ to support the conclusion reached." *Id.* We view all evidence in the light most favorable to sustaining the conviction and resolve all reasonable inferences against Daniels. *See id.*

¶14 As charged here, a conviction for aggravated assault as a class 3 dangerous felony requires evidence that a defendant intentionally placed "another person in reasonable apprehension of imminent physical injury" using a "deadly weapon or dangerous instrument." A.R.S. §§ 13-1203(A)(2) (2010), 13-1204(A)(2) (Supp. 2012). A felony is considered "dangerous" if it involved the "use or threatening exhibition of a deadly weapon or dangerous instrument" A.R.S. § 13-105(13) (Supp. 2012). At trial, the victim testified that Daniels waved a knife at her

³ To the extent that Daniels requests that we review the record for fundamental error with respect to actual innocence we construe it as a challenge to the sufficiency of the evidence and address the two issues together. *See* Ariz. R. Crim. P. 32.1(h). If, however, Daniels intended to challenge her conviction based on actual innocence, she must do so in a petition for post-conviction relief. *See* Ariz. R. Crim. P. 32.2(b).

and her child and verbally threatened to kill them. The victim also testified that this action made her feel that she and her child were in danger of physical harm. Further, Phoenix Police officers testified that when they arrived on the scene they found a knife in Daniels' pocket, which was admitted into evidence at trial. We therefore find there is sufficient evidence in the record to support Daniels' conviction for aggravated assault, a class 3 dangerous felony.

¶15 Daniels mentions several other issues in her supplemental brief; however, her arguments are undeveloped and we are unable to ascertain the precise issues she is attempting to raise. We therefore decline to address Daniels' remaining arguments. See *State v. Cons*, 208 Ariz. 409, 416, ¶ 18, 94 P.3d 609, 616 (App. 2004) (declining to address undeveloped argument raised by appellant).

¶16 Our review of the record reveals a sentencing error that favors Daniels. The superior court awarded Daniels presentence incarceration credit for the time she spent incarcerated from her arrest in February 2011 through her trial on the current offense. However, the time was credited against her sentences in both the current case and her probation matter. This is not allowed when a defendant receives consecutive sentences. See *State v. Cuen*, 158 Ariz. 86, 87-88, 761 P.2d 160, 161-62 (App. 1988) (holding that when consecutive sentences

are given, sentencing court may not give double credit for presentence time served). Defendant should have received credit for 178 days served on the probation case, not 452. However, in the absence of an appeal or cross-appeal by the State seeking to correct an illegally lenient sentence, this court does not have jurisdiction to consider that issue. *State v. Dawson*, 164 Ariz. 278, 282-83, 792 P.2d 741, 745-46 (1990).

¶17 We have considered defense counsel's briefs and examined the record in both matters for reversible error, see *Leon*, 104 Ariz. at 300, 451 P.2d at 881, we find none. The evidence presented in supports the conviction and probation revocation and the sentences imposed fall within the ranges permitted by law. Although Daniels chose to represent herself for part of the trial, it is clear from the record that her waiver of counsel was made intelligently and voluntarily. Further, the proceedings were conducted in compliance with her constitutional and statutory rights and the Arizona Rules of Criminal Procedure.

¶18 Pursuant to *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984), counsel's obligations in this appeal have ended. Counsel need do no more than inform Daniels of the disposition of the appeal and her future options, unless counsel's review reveals an issue appropriate for submission to the Arizona Supreme Court by petition for review. Daniels has

thirty days from the date of this decision in which to proceed, if she desires, with a *pro se* motion for reconsideration or petition for review.

CONCLUSION

¶19 The conviction and sentence are affirmed.

/s/

JOHN C. GEMMILL, Presiding Judge

CONCURRING:

/s/

JON W. THOMPSON, Judge

/s/

DONN KESSLER, Judge