

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: 10/23/2012
RUTH A. WILLINGHAM,
CLERK
BY: sls

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

STATE OF ARIZONA,) 1 CA-CR 11-0807
)
Appellee,) DEPARTMENT C
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
HIDIG NUUR ABDI,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2011-120571-001 DT

The Honorable Samuel A. Thumma, Judge

AFFIRMED

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

Bruce Peterson, Office of the Legal Advocate Phoenix
By Frances Gray, Deputy Legal Advocate
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 Hidig Nuur Adbi, asks

this Court to search the record for fundamental error. Abdi was given an opportunity to file a supplemental brief in propria persona. He has not done so. After reviewing the record, we affirm Abdi'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 Abdi. *State v. Fontes*, 195 Ariz. 229, 230, ¶ 2, 986 P.2d 897, 898 (App. 1998). Abdi and the victim are cousins. During a night of drinking at the victim's apartment, Abdi got into a fight with the victim's neighbor. The neighbor left and Abdi followed him outside. When Abdi returned, the victim would not let him back in. Abdi tried to force his way into the apartment by kicking the door and breaking a window before discovering that the door had been unlocked. When he entered through the door, the cousins began fighting. Abdi grabbed a kitchen knife and cut the victim's arm. Abdi fled. The victim called 9-1-1 and reported that Abdi had stabbed him. Police stopped Abdi on a nearby street with blood on his clothing.

¶3 The State charged Abdi with aggravated assault, a class 3 felony and a dangerous offense because he used a knife. On the first day of trial, Abdi stated that he disagreed with his attorney's trial strategy and accordingly waived his right

to counsel. The trial court appointed Abdi's attorney as advisory counsel. Abdi revoked his waiver later the same day, however, and the advisory counsel represented Abdi for the remainder of the proceedings.

¶4 The victim did not want to press charges or testify against Abdi, but was subpoenaed as a witness. Although the victim testified that he could not recall any details about the fight, his injury or what he told police, he stated that his report to police that night was truthful. The jury then heard testimony from a police officer regarding the victim's report of the incident and a recording of his 9-1-1 call. At the close of the evidence, the trial court properly instructed the jury on the elements of the offense. The jury convicted Abdi of aggravated assault, a class three felony and found that it was a dangerous crime.

¶5 The trial court conducted the sentencing hearing in compliance with Abdi's constitutional rights and Rule 26 of the Arizona Rules of Criminal Procedure. The trial court imposed a minimum five-year prison sentence with credit for 204 days presentence incarceration.

DISCUSSION

¶6 We review Abdi's conviction and sentence for fundamental error. See *State v. Gendron*, 168 Ariz. 153, 155, 812 P.2d 626, 628 (1991). Counsel for Abdi has advised this

Court that after a diligent search of the entire record, he has found no arguable question of law. We have 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. All of the proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure. So far as the record reveals, Abdi was represented by counsel at all stages of the proceedings, both before he knowingly and voluntarily waived his right to counsel on the first day of trial and after he revoked the waiver that same day. The sentence imposed was within the statutory limits. We decline to order briefing, and we affirm Abdi's conviction and sentence.

¶7 Upon the filing of this decision, defense counsel shall inform Abdi 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). Abdi 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 Abdi to file a pro per motion for reconsideration to thirty days from the date of this decision.

CONCLUSION

¶8 We affirm.

_____/s/_____
RANDALL M. HOWE, Judge

CONCURRING:

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

_____/s/_____
MARGARET H. DOWNIE, Judge