

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: 06/19/2012  
RUTH A. WILLINGHAM,  
CLERK  
BY: sls

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

STATE OF ARIZONA,

Appellee,

v.

ARTEMIO WALTER HOLGUIN,

Appellant.

1 CA-CR 11-0836

1 CA-CR 11-0838

(Consolidated)

DEPARTMENT B

**MEMORANDUM DECISION**

(Not for Publication -  
Rule 111, Rules of the  
Arizona Supreme Court)

Appeal from the Superior Court in Maricopa County

Cause Nos. CR2002-094484  
CR2011-122736

The Honorable Patricia A. Starr, Judge Pro Tem

**AFFIRMED**

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Phoenix

By Kent E. Cattani, Chief Counsel

Criminal Appeals/Capital Litigation Division

Attorneys for Appellee

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Phoenix

By Spencer D. Heffel, Deputy Public Defender

Attorneys for Appellant

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**T H U M M A**, 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 Artemio Walter Holguin ("Holguin") asks this Court to search the record for fundamental error. Additionally, Holguin filed a supplemental brief in propria persona, raising several issues. After reviewing the record, we affirm Holguin's conviction and sentence for assault.

#### FACTS AND PROCEDURAL HISTORY<sup>1</sup>

¶2 Holguin was driving when someone allegedly threw an object at his car. Believing the victim threw the object, Holguin parked his car and approached the victim. A fight ensued, and Holguin hit the victim over the head with a metal object before fleeing the scene.

¶3 The State charged Holguin with aggravated assault, a class 3 dangerous felony and alleged Holguin was on probation when he committed the offense. The trial court properly instructed the jury on the elements of the offense. At trial Holguin was found guilty of the lesser-included offense of misdemeanor assault. The superior court found him in violation of his probation. The trial court conducted the sentencing

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<sup>1</sup> We view the facts in the light most favorable to sustaining the trial court's judgment and resolve all reasonable inferences against Holguin. *State v. Fontes*, 195 Ariz. 229, 230, ¶ 2, 986 P.2d 897, 898 (App. 1998).

hearing in compliance with Holguin's constitutional rights and Rule 26 of the Arizona Rules of Criminal Procedure. In the probation matter, Holguin's probation was revoked, and he was sentenced to the presumptive term of one year in prison and given 8 days of presentence incarceration credit. In the assault matter, Holguin was sentenced to a consecutive sentence of 180 days and credited with 180 days of presentence incarceration.

¶4 Holguin timely appeals. This court has jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1) (West 2012),<sup>2</sup> 13-4031 and -4033(A).

#### DISCUSSION<sup>3</sup>

¶5 Counsel for Holguin advised this Court that after a diligent search of the entire record, he found no arguable question of law.

¶6 Holguin raises five issues on appeal. He first argues the court violated his Fourteenth Amendment Due Process rights by allowing the State to amend the Information on the first day of trial to conform to the Direct Complaint. The Information alleged the assault was a dangerous offense because "the offense involved the intentional or knowing infliction of serious

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<sup>2</sup> Absent material revisions to this decision, we cite the current Westlaw version of applicable statutes.

<sup>3</sup> We review Holguin's conviction and sentence for fundamental error, an error that is "clear, egregious, and curable only via a new trial." *State v. Gendron*, 168 Ariz. 153, 155, 812 P.2d 626, 628 (1991).

physical injury," whereas the Direct Complaint alleged that the assault was a dangerous offense because "the offense involved the discharge, use, or threatening exhibition of a metal object, a deadly weapon, or dangerous instrument." The superior court properly allowed the State to amend the Information to conform to the Direct Complaint because the change remedied a technical defect in the information. See Ariz. R. Crim. P. 13.5(b) ("The charge may be amended only to correct mistakes of fact or remedy formal or technical defects.").<sup>4</sup>

¶17 Holguin next argues he is entitled to a new trial because Juror No. 7 was struck in violation of the Equal Protection Clause and the Supreme Court's decision in *Batson v. Kentucky*, 476 U.S. 79 (1986). We disagree. Rule 18.4 of the Arizona Rules of Criminal Procedure authorizes the court to strike a juror for cause if there are reasonable grounds to believe that he or she cannot render a fair and impartial verdict. Juror No. 7 was properly struck, without objection, after admitting he could not be fair and impartial because of his relationships with former gang members. There was no error in striking Juror No. 7 for cause.

¶18 Holguin next contends Juror No. 26 was struck in violation of the Americans with Disabilities Act. Juror No. 26

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<sup>4</sup> See also *State v. Bruce*, 125 Ariz. 421, 423, 610 P.2d 55, 57 (1980).

said he was having a hard time hearing, and both lawyers agreed he should be struck for that reason. There was no error in striking Juror No. 26 for this reason. See A.R.S. § 21-202(B)(1).

¶9 Holguin next argues the superior court erred in denying his motion for a directed verdict under Rule 20 of the Arizona Rules of Criminal Procedure. A Rule 20 motion should be granted only "if there is no substantial evidence to warrant a conviction" on a charge. Ariz. R. Crim. P. 20(a). Substantial evidence exists when reasonable jurors could accept the evidence as "sufficient to support a guilty verdict beyond a reasonable doubt." *State v. Davolt*, 207 Ariz. 191, 212, ¶ 87, 84 P.3d 456, 477 (2004). Substantial evidence supports Holguin's conviction for assault. The victim testified Holguin struck the victim with a metal object, and photographs confirmed the victim suffered a serious laceration to his head. Accordingly, we find no error.

¶10 Finally, Holguin argues the jury instructions for the lesser-included offense of assault violated his Sixth and Fourteenth Amendment rights. Again, we find no error. A jury properly may find a defendant charged with aggravated assault guilty of the lesser-included offense of assault if they find the defendant not guilty of the charged crime. See *State v. LeBlanc*, 186 Ariz. 437, 438, 924 P.2d 441, 442 (1996).

¶11 We have reviewed counsel's brief, Holguin's pro-se

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 our review of the record reveals, the proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure, Holguin was represented by counsel at all stages of the proceedings and the sentence imposed was within the statutory limits. We decline to order additional briefing, and we affirm Holguin's conviction and sentence.

¶12 Upon the filing of this decision, defense counsel shall inform Holguin 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). Holguin 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**

¶13 For the forgoing reasons, we affirm Holguin's conviction and sentence for assault.

/S/ \_\_\_\_\_  
SAMUEL A. THUMMA, Judge

CONCURRING:

/S/ \_\_\_\_\_  
PATRICIA A. OROZCO, Presiding Judge

/S/ \_\_\_\_\_  
JON W. THOMPSON, Judge