

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED  
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: 06/26/2012  
RUTH A. WILLINGHAM,  
CLERK  
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IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

STATE OF ARIZONA, ) No. 1 CA-CR 11-0874  
)  
Appellee, ) DEPARTMENT D  
)  
v. ) **MEMORANDUM DECISION**  
)  
JOSEPH WESLEY GOMEZ, ) (Not for Publication -  
) Rule 111, Rules of the  
Appellant. ) Arizona Supreme Court)  
)

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Appeal from the Superior Court in Maricopa County

Cause No. CR2006-166549-001

The Honorable Janet E. Barton, Judge

**AFFIRMED**

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

Bruce Peterson, Office of the Legal Advocate Phoenix  
By Frances J. Gray, Deputy Legal Advocate  
Attorneys for Appellant

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G E M M I L L, Judge

¶1 Joseph Wesley Gomez appeals his re-sentencing on 23  
felony counts, including the following: one count first-degree  
burglary, nine counts aggravated assault, one count assisting a

criminal syndicate, one count impersonating a peace officer, five counts armed robbery, one count participation in a criminal syndicate, two counts threatening or intimidating, one count conspiracy to commit threatening or intimidating, and two counts conspiracy to commit influencing a witness. Gomez's counsel filed a brief 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. Gomez was afforded the opportunity to file a *pro se* supplemental brief but did not do so. 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**

¶12 On February 13, 2008, a jury found Gomez guilty of all 23 felony counts arising from a home invasion robbery and Gomez's subsequent attempt to intimidate witnesses from testifying about the robbery.

¶13 At sentencing, the trial court grouped the various offenses into six sets of concurrent prison terms, with each set to run consecutively to the other, as follows:

Set One: Count 1 (burglary in the first-degree), an aggravated term of 16 years; and Count 10 (impersonating a peace officer), an aggravated term of 11 years.

Set Two: Counts 2 through 8 and Count 22 (aggravated assault), an aggravated term of 13 years.

Set Three: Count 9 (assisting a criminal syndicate), an aggravated term of 12 years; and Count 16 (participation in a criminal syndicate), an aggravated term of 16 years.

Set Four: Counts 11 through 15 (armed robbery), an aggravated term of 17 years.

Set Five: Counts 17 and 18 (threatening and intimidating), an aggravated term of 11 years; Count 19 (conspiracy to commit threatening or intimidating), an aggravated term of 11 years; Count 20 (conspiracy to commit influencing a witness), an aggravated term of 5 years; and Count 21 (influencing a witness), a presumptive term of 5 years.

Set Six: Count 23 (aggravated assault), an aggravated term of 12 years.

These sentences totaled 85 years. The trial court also found Gomez was entitled to 694 days of pre-sentencing credit.

¶4 Gomez appealed his convictions and sentences. In October 2009, citing *State v. Riley*, 196 Ariz. 40, 46-47, ¶ 21, 992 P.2d 1135, 1141-42 (App. 1999), this court concluded that the trial court erred in its sentencing of Gomez. *State v. Gomez*, 1 CA-CR 08-0318, 2009 WL 3526649, at \*11, ¶45 (Ariz. App. Oct. 29, 2009) (mem. Decision), *aff'd in part, vacated in part*, 226 Ariz. 165, 244 P.3d 1163 (2010). We determined that the trial court improperly imposed consecutive sentences based on the type of offense, rather than imposing consecutive sentences based on the offenses against each victim. *Gomez*, 1 CA-CR 08-

0318 at \*8, ¶¶ 37-38. This court further stated that the trial court may group the home invasion robbery and the witness intimidation convictions into two separate categories and properly order consecutive sentences between the two sets. *Gomez*, 1 CA-CR 08-0318, at \*9 ¶ 40. We vacated the sentences and remanded for resentencing. *Gomez*, 1 CA-CR 08-0318, at \*12, ¶ 50.

¶5 On December 9, 2011, the trial court conducted Gomez's re-sentencing hearing.<sup>1</sup> The trial court re-grouped the offenses into two sets of prison terms, one based on the events that took place in April 2006 and one group that took place in August through October of 2006. Set one was ordered to run consecutively with set two, and each individual charge was to run concurrently to the other charges within its respective set.

Set One: Count 1 (burglary in the first-degree) and Counts 11 through 15 (armed robbery), an aggravated term of 32 years.

Counts 2 through 8, 22, 23 (aggravated assault) and Count 9 (assisting a criminal syndicate), an aggravated term of 22 years.

Count 10 (impersonating a peace officer), an aggravated term of 13 years.

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<sup>1</sup> Following our decision, Gomez successfully sought review by the Arizona Supreme Court on issues other than sentencing. In December 2010, our Supreme Court issued an opinion that, as pertinent here, affirmed our sentencing decision. *State v. Gomez*, 226 Ariz. 165, 171, ¶ 28, 244 P.3d 1163, 1169 (2010).

Set Two: Count 16 (participation in a criminal syndicate), an aggravated term of 28 years.

Counts 17 and 18 (threatening or intimidating), Count 19 (conspiracy to commit threatening or intimidating), an aggravated sentence of 12 years.

Count 20 and 21 (conspiracy to commit influencing a witness), an aggravated sentence of 6 years.

These new sentences impose a total of 60 years of imprisonment. The trial court again found that Gomez was entitled to 694 days of pre-sentence incarceration credit for counts 1 through 15, 22, and 23.

#### **DISCUSSION**

¶16 Having considered defense counsel's brief and examined the record for reversible error, see *Leon*, 104 Ariz. at 300, 451 P.2d at 881, we find none. The sentences imposed fall within the ranges permitted by law, and the evidence presented supports the sentencing terms. As far as the record reveals, Gomez was represented by counsel at all stages of the proceedings, and these proceedings were conducted in compliance with his constitutional and statutory rights and the Arizona Rules of Criminal Procedure.

¶17 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 Gomez of

the disposition of the appeal and his future options, unless counsel's review reveals an issue appropriate for submission to the Arizona Supreme Court by petition for review. Gomez has thirty days from the date of this decision in which to proceed, if he desires, with a *pro se* motion for reconsideration or petition for review.

**CONCLUSION**

¶8 The sentences are affirmed.

\_\_\_\_\_/s/\_\_\_\_\_  
JOHN C. GEMMILL, Presiding Judge

CONCURRING:

\_\_\_\_\_/s/\_\_\_\_\_  
PETER B. SWANN, Judge

\_\_\_\_\_/s/\_\_\_\_\_  
ANDREW W. GOULD, Judge