

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

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



DIVISION ONE
FILED: 09/13/2012
RUTH A. WILLINGHAM,
CLERK
BY: DLL

STATE OF ARIZONA,) 1 CA-CR 12-0040
)
Appellee,) DEPARTMENT C
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
RICHARD BRENT RANDOLPH, JR.,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
)

Appeal from the Superior Court in Navajo County

Cause No. S0900CR201000846

The Honorable Thomas L. Wing, Judge

AFFIRMED

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

Samuel J. Roser Snowflake
Attorney 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 Richard Randolph asks this Court to search the record for fundamental error. Randolph was given an opportunity to file a supplemental brief in propria persona, but he has not done so. After reviewing the record, we affirm Randolph's convictions and sentences.

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 Randolph. *State v. Fontes*, 195 Ariz. 229, 230, ¶ 2, 986 P.2d 897, 898 (App. 1998). In March 2010, the victim, a prison inmate, reported that Randolph and another prison inmate repeatedly assaulted and sexually abused him. The State charged Randolph with attempted sexual assault, a class 3 felony; sexual abuse, a class 5 felony; four counts of kidnapping, class 2 felonies; and stalking, a class 5 felony.

¶3 The evidence at trial showed that Randolph and the other inmate kicked and punched the victim, inserted a bottle into his anus, and touched the victim's genitals. In addition, Randolph put a chemical hair remover onto the victim's scalp.

¶4 At the close of the evidence, the trial court properly instructed the jury on the elements of the offenses, except for an acquittal on one count of kidnapping. Randolph was convicted as charged on all other counts. The trial court conducted the sentencing hearing in compliance with Randolph's constitutional

rights and Rule 26 of the Arizona Rules of Criminal Procedure. The trial court sentenced Randolph to concurrent terms of sixteen years imprisonment on each of the three kidnapping convictions, five and one-half years for the stalking conviction, six years on the sexual abuse conviction, and fifteen years on the attempted sexual assault conviction. The trial court gave him credit for 364 days of presentence incarceration.¹

DISCUSSION

¶5 We review Randolph's convictions and sentences for fundamental error. See *State v. Gendron*, 168 Ariz. 153, 155, 812 P.2d 626, 628 (1991). Counsel for Randolph 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. The proceedings were all conducted in compliance with the

¹ Randolph should not have received any presentence incarceration credit because he was already serving a sentence on another offense. See *State v. Verdugo*, 180 Ariz. 180, 186, 883 P.2d 417, 423 (App. 1993) (holding that a defendant already in custody and serving a sentence on another offense is not entitled to presentence incarceration credit for the time he is awaiting trial on the new offense). We cannot correct the error, however, because it favors Randolph and the State did not file a cross appeal. See *State v. Dawson*, 164 Ariz. 278, 281-82, 792 P.2d 741, 744-45 (1990).

Arizona Rules of Criminal Procedure. So far as the record reveals, counsel represented Randolph at all stages of the proceedings and the sentences imposed were within the statutory limits. We decline to order briefing and affirm Randolph's convictions and sentences.

¶6 Upon the filing of this decision, defense counsel shall inform Randolph of the status of his appeal and of his 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). Randolph 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 Randolph to file a pro per motion for reconsideration to thirty days from the date of this decision.

CONCLUSION

¶7 We affirm Randolph's convictions and sentences.

_____/s/_____
RANDALL M. HOWE, Judge

CONCURRING:

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

_____/s/_____
MARGARET H. DOWNIE, Judge