

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: 07/31/2012  
RUTH A. WILLINGHAM,  
CLERK  
BY: sls

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

STATE OF ARIZONA,

Appellee,

v.

DONALD LEE COOK,

Appellant.

1 CA-CR 12-0073

1 CA-CR 12-0075

(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(Not for Publication -  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. CR2005-104441-001 SE  
CR2005-032990-001 SE

The Honorable Connie Contes, Judge

**AFFIRMED**

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

James J. Haas, Maricopa County Public Defender  
By Paul J. Prato, Deputy Public Defender  
Attorney for Appellant Phoenix

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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 Donald Lee Cook ("Cook") asks this Court to search the record for fundamental error. Additionally, Cook filed a supplemental brief in *propria persona*. After reviewing the record, and given we have previously affirmed his convictions, we affirm Cook's sentences.

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

¶2 A jury found Cook guilty in CR 2005-032990 of seven counts of sexual exploitation of a minor and in CR 2005-104441 of one count of sexual exploitation of a minor, all class two felonies and dangerous crimes against children. At a consolidated sentencing hearing in October 2009, Cook was sentenced to the presumptive term of seventeen years in prison on all eight counts. The court ordered that all sentences in the 032990 matter run consecutively to the sentence in the 104441 matter.

¶3 This Court vacated those sentences in a memorandum decision in October 2011, and the cases were remanded for resentencing because Cook was denied the right to represent

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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 Cook. *State v. Fontes*, 195 Ariz. 229, 230, ¶ 2, 986 P.2d 897, 898 (App. 1998).

himself at his sentencing hearing. See 1 CA-CR 09-0804 & -0808 (consolidated). Cook was resentenced at a consolidated sentencing hearing in January 2012, at which time he represented himself. He was resentenced to the presumptive term of seventeen years in prison for each of the eight counts, and the court again ordered that all sentences in the 032990 matter be served consecutively to the sentence in the 104441 matter.

¶4 Cook timely appeals his sentences. 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 Cook advised this Court that after a diligent search of the entire record, he found no arguable question of law.

¶6 Cook claims he received ineffective assistance of counsel on appeal because his attorney refused to make certain arguments on appeal, informed him that he did not have the right to file a supplemental *pro se* brief and misinformed him about court procedures. We lack jurisdiction to address Cook's claims of ineffective assistance of counsel. *State v. Spreitz*, 202

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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 Cook's sentences for fundamental error, an error that is clear and egregious. *State v. Gendron*, 168 Ariz. 153, 155, 812 P.2d 626, 628 (1991).

Ariz. 1, 3, ¶ 9, 39 P.3d 525, 527 (2002). Claims of ineffective assistance of counsel must be brought in a petition for post-conviction relief under Rule 32 of the Arizona Rules of Criminal Procedure. *Id.*

¶17 We have reviewed counsel's brief, Cook'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. Our review of the record reveals that the proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure; Cook represented himself at the resentencing hearing as he had requested; advisory counsel was present for resentencing and the sentences imposed were within the statutory limits. We decline to order additional briefing, and we affirm Cook's sentences.

¶18 Upon the filing of this decision, defense counsel is directed to inform Cook 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). Cook 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**

¶19 For the forgoing reasons, we affirm Cook's sentences for sexual exploitation of a minor.

/S/  
SAMUEL A. THUMMA, Judge

CONCURRING:

/S/  
PATRICIA A. OROZCO, Presiding Judge

/S/  
JON W. THOMPSON, Judge