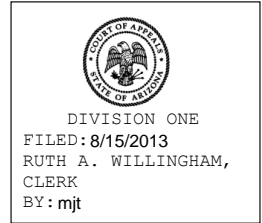


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



STATE OF ARIZONA,) 1 CA-CR 12-0799
)
Appellee,) DEPARTMENT E
)
v.) **MEMORANDUM DECISION**
) (Not for Publication - Rule
MEGAN LOUISE MCDONOUGH,) 111, Rules of the Arizona
) Supreme Court)
Appellant.)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2012-122238-001 SE

The Honorable Brian D. Kaiser, Commissioner

AFFIRMED AS CORRECTED

Thomas C. Horne, Arizona Attorney General Phoenix
By Joseph T. Maziarz, Chief Counsel Criminal Appeals
Attorneys for Appellee

James J. Haas, Maricopa County Public Defender Phoenix
By Terry J. Adams, Deputy Public Defender
Attorneys for Appellant

N O R R I S, Judge

¶1 Megan McDonough timely appeals from her conviction and the imposition of supervised probation for aggravated assault. Ariz. Rev. Stat. ("A.R.S.") § 13-1204(8)(e) (Supp. 2012). After searching the record on appeal and finding no arguable question

of law that was not frivolous, McDonough's counsel filed a brief in accordance with *Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), asking this court to search the record for fundamental error. This court granted counsel's motion to allow McDonough to file a supplemental brief *in propria persona*, but McDonough did not do so. After reviewing the entire record, we find no fundamental error and, therefore, affirm McDonough's conviction and probation.

FACTS AND PROCEDURAL BACKGROUND¹

¶12 On April 27, 2012, McDonough went to a hospital in Maricopa County, Arizona, and in the course of checking in, stated she was suicidal. Following the hospital procedures, the nurse moved McDonough to a private room, took her belongings, and asked her to change into a hospital gown. McDonough became upset and "[s]tormed out" of the hospital. Although McDonough eventually returned to the hospital, she caused "a commotion in the hallway," refused to change into the gown, and screamed at hospital staff. When McDonough "started pushing her way out of the [examination] room," for her safety and the safety of others, nurses and a security guard attempted to restrain her to

¹We view the facts in the light most favorable to sustaining the jury's verdict and resolve all reasonable inferences against McDonough. *State v. Guerra*, 161 Ariz. 289, 293, 778 P.2d 1185, 1189 (1989).

a bed. During the struggle, McDonough kicked a nurse in the chest and stomach.

¶13 Subsequently, a grand jury indicted McDonough for aggravated assault.² Before trial, the State moved to designate the aggravated assault count as a class one misdemeanor and conduct a bench trial, and, without objection by McDonough, the superior court granted the State's motion. After finding McDonough guilty of aggravated assault, the superior court suspended imposition of sentence and placed her on supervised probation for one year.

DISCUSSION

¶14 We have reviewed the entire record for reversible error and find none. See *Leon*, 104 Ariz. at 300, 451 P.2d at 881. All of the proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure. So far as the record reveals, McDonough was represented by counsel at all stages of the proceedings and was present at all critical stages. There was sufficient evidence for the superior court to find McDonough committed the offense, and the probation imposed was within the statutory limits. See A.R.S. § 13-1204(D) (Supp. 2012) (aggravated assault against licensed health care practitioner is class six felony); A.R.S. § 13-604 (2010) (class six felony may

²The grand jury also indicted McDonough for assault against a security guard. The superior court acquitted McDonough on this count.

be designated as class one misdemeanor); A.R.S. § 13-707 (2010) (class one misdemeanor is punishable by six months of imprisonment); A.R.S. § 13-902(A)(5) (Supp. 2012) (for class one misdemeanor, probation may continue for three years).

¶15 Although the trial minute entry and the sentencing minute entry both stated McDonough waived the right to a trial by jury, McDonough did not waive her right to a jury trial. McDonough was not entitled to a jury trial because she was tried for a class one misdemeanor, which was punishable by no more than six months of incarceration. A.R.S. § 13-707 (2010); *Derendal v. Griffith*, 209 Ariz. 416, 418-19, ¶ 6, 422, ¶ 21, 104 P.3d 147, 149-50, 153 (2005) (criminal offense for which maximum statutory penalty is less than six months of incarceration is presumptively an offense for which right to jury trial does not attach). Nevertheless, we correct the trial minute entry and sentencing minute entry, respectively, to delete the following: "the Defendant has previously waived her right to trial by jury[,]" and "WAIVER OF JURY TRIAL: The Defendant knowingly, intelligently and voluntarily waived the right to a trial by jury[.]"

CONCLUSION

¶16 We decline to order briefing and affirm McDonough's conviction and probation.

