

NOTICE: NOT FOR OFFICIAL PUBLICATION.  
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

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

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STATE OF ARIZONA, *Appellee*,

*v.*

JOSEPH WALTER EVANS, *Appellant*.

No. 1 CA-CR 16-0192  
FILED 5-23-2017

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Appeal from the Superior Court in Maricopa County  
No. CR2014-005350-001  
The Honorable David O. Cunanan, Judge

**AFFIRMED**

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COUNSEL

Arizona Attorney General's Office, Phoenix  
By Joseph T. Maziarz  
*Counsel for Appellee*

Maricopa County Public Defender's Office, Phoenix  
By Paul J. Prato  
*Counsel for Appellant*

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**MEMORANDUM DECISION**

Judge Kent E. Cattani delivered the decision of the Court, in which Presiding Judge Peter B. Swann and Judge Donn Kessler joined.

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**CATTANI**, Judge:

¶1 Joseph Walter Evans appeals his conviction of child prostitution and the resulting sentence. Evans’s counsel filed a brief in accordance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297 (1969), certifying that, after a diligent search of the record, he found no arguable question of law that was not frivolous. Evans was given the opportunity to file a supplemental brief, but did not do so. Counsel asks this court to search the record for reversible error. *See State v. Clark*, 196 Ariz. 530, 537, ¶ 30 (App. 1999). After reviewing the record, we affirm Evans’s conviction and sentence.

**FACTS AND PROCEDURAL BACKGROUND**

¶2 In July 2014, the Chandler Police Department placed an internet advertisement posing as a 19-year-old escort on a website frequently used by prostitutes. Evans texted the number in the advertisement, indicated that he was interested in a “BBBJ” (jargon referring to oral sex without a condom), and asked about “donations” (a term frequently used to ask prostitutes about the price for the requested service). An undercover officer using the pseudonym “Sky” responded to Evans’s messages, indicating that the price would be \$50.

¶3 Evans and Sky then exchanged the following text messages:

Sky: “Can u get me some cigs? Lost my fake id”

Evans: “Don’t u only have to be 18 to buy cigs”

Sky: “Ya I’m 16 but almost 17 tho”

Evans: “your add says 19”

Sky: “So haha”

Evans: “Are you affiliated with any police?”

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Sky: “No and don’t need no trouble so hope ur cool.”

Evans bought the cigarettes and went to meet Sky at a hotel in Chandler.

¶4 When Evans arrived at the hotel room, the undercover officer invited him inside and asked him to show her the money. He began to pull the money out of his pocket, then asked her to touch his genitals, to ensure that she was not a police officer. She refused and excused herself to the restroom. This was a signal to officers watching via secret camera from an adjacent hotel room to come arrest Evans.

¶5 After his arrest, Evans was informed of his rights under *Miranda v. Arizona*, 384 U.S. 436 (1966), and was interviewed at the police station. Evans indicated that this was the first time he had ever hired a prostitute. He acknowledged that Sky had said she was 16, but also said he believed the undercover officer was older than that when he saw her in the hotel room. He said that he decided to stay due to the officer’s apparent age.

¶6 The State charged Evans with one count of child prostitution. *See* Ariz. Rev. Stat. (“A.R.S.”) § 13-3212(B)(2).<sup>1</sup> After a three-day trial, a jury found Evans guilty. Evans received the mandatory minimum sentence of seven years’ imprisonment. *See* A.R.S. § 13-3212(H)(1). Evans timely appealed.

### DISCUSSION

¶7 We have read and considered counsel’s brief and have reviewed the record for reversible error. *See Leon*, 104 Ariz. at 300. We find none.

¶8 The evidence was sufficient to support the jury’s verdict. Evans was charged with child prostitution, which a person commits by “knowingly . . . [e]ngaging in prostitution with a minor who the person knows or should have known is fifteen, sixteen or seventeen years of age.” A.R.S. § 13-3212(B)(2). “Prostitution” is defined as “engaging in or agreeing or offering to engage in sexual conduct under a fee arrangement with any person for money or any other valuable consideration.” A.R.S. § 13-3211(5). It is not a defense that the person who the defendant thinks is a minor is in fact a police officer posing as a minor. A.R.S. § 13-3212(C). Although Evans may have made the initial prostitution agreement under the impression

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<sup>1</sup> Absent material revisions after the relevant date, we cite a statute’s current version.

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that Sky was an adult, he nonetheless bought her cigarettes, showed up to the hotel room, demonstrated his intent to pay, and asked her to touch his genitals, all after she had identified herself as a 16 year old. The jury could reasonably conclude from this evidence that Evans had offered to engage in sexual conduct under a fee arrangement with a person he knew was a minor.<sup>2</sup>

¶9 Evans was present and represented by counsel at all critical stages of the proceedings against him, including appropriate pretrial hearings. The record reflects that the superior court afforded Evans all his constitutional and statutory rights, and that the proceedings were conducted in accordance with the Arizona Rules of Criminal Procedure. And Evans's sentence falls within the range prescribed by law, with proper credit given for 50 days of presentence incarceration.

CONCLUSION

¶10 Evans's conviction and sentence are affirmed. After the filing of this decision, defense counsel's obligations pertaining to Evans's representation in this appeal will end after informing Evans of the outcome of this appeal and his future options, unless counsel's review reveals an issue appropriate for submission to the Arizona Supreme Court by petition for review. *See State v. Shattuck*, 140 Ariz. 582, 584-85 (1984). On the court's own motion, Evans has 30 days from the date of this decision to proceed, if he desires, with a *pro se* motion for reconsideration or petition for review.



AMY M. WOOD • Clerk of the Court  
FILED: AA

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<sup>2</sup> We note that the court instructed the jurors to convict only if they found that Evans had "knowingly engaged in prostitution with a minor the defendant *knew* was 15, 16 or 17 years of age." (Emphasis added.) A.R.S. § 13-3212(B)(2) was amended shortly before Evans committed the crime to encompass engaging in prostitution with a minor the defendant "*knows or should have known*" is 15, 16, or 17 years of age. (Emphasis added.) *See* 2014 Ariz. Sess. Laws ch. 151, § 7 (51st Leg., 2d Reg. Sess.). The evidence was sufficient to convict Evans under either standard, and it was not reversible error for the court to instruct the jury on the higher standard.