

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

STATE OF ARIZONA, *Appellee*,

v.

WARREN GODDEN, *Appellant*.

No. 1 CA-CR 16-0280
FILED 4-11-2017

Appeal from the Superior Court in Maricopa County
No. CR 2014-147936-001
The Honorable Jacki Ireland, Judge *Pro Tempore*

AFFIRMED AS AMENDED AND CORRECTED

COUNSEL

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

Maricopa County Public Defender's Office, Phoenix
By Terry J. Adams
Counsel for Appellant

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MEMORANDUM DECISION

Judge Patricia K. Norris delivered the decision of the Court, in which Presiding Judge Kenton D. Jones and Judge Paul J. McMurdie joined.

NORRIS, Judge:

¶1 Warren Godden timely appeals from his convictions and sentences for: aggravated assault, a class three dangerous felony; disorderly conduct, a class six dangerous felony; and endangerment, a class six dangerous felony. After searching the record on appeal and finding no arguable question of law that was not frivolous, Godden’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 Godden to file a supplemental brief *in propria persona*, but Godden did not do so. After reviewing the entire record, we find no fundamental error and, therefore, affirm Godden’s convictions and sentences as amended and corrected.

FACTS AND PROCEDURAL BACKGROUND¹

¶2 On the afternoon of September 4, 2014, R.R. and M.L. were relaxing “playing dominos and having a good time” with two other men in a community area of their apartment complex. Godden arrived, “mad about something” and started “flashing” and waiving about a small handgun. He pointed the gun “at everybody,” and then pointed it directly at M.L. from about one to two feet away. M.L. felt threatened and feared for his life as did R.R., who was also concerned for the safety of the others present because Godden “threatened everybody.” The players told Godden to put the gun away, but instead, he slammed it on the dominos table and told them he was not going to put it away. One of the players took the gun away from Godden and escorted him off the property.

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

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¶3 Police arrived after Godden had left and Officer T.S. spoke with M.L. About two weeks later, Officer C.C. arrested Godden, on an unrelated matter, finding him in possession of a small handgun. Later, Detective K.G. returned to interview M.L. and R.R. about the events on the afternoon of September 4, 2014. During their interviews, M.L. and R.R. independently identified Godden from a photo lineup as the individual who had threatened them with a gun. M.L. and R.R. additionally testified that the gun Godden had at his arrest was similar to the gun he had used on September 4, 2014.

¶4 A twelve-person jury found Godden guilty of Aggravated Assault, Ariz. Rev. Stat. (“A.R.S.”) § 13-1204 (2010), Disorderly Conduct, A.R.S. § 13-2904 (2010), and Endangerment, A.R.S. § 13-1201(2010).² On April 20, 2016, the superior court sentenced Godden as a category three offender, *see infra* ¶ 7, to presumptive terms on each count—11.25 years’ imprisonment for aggravated assault, a dangerous offense and class three felony; 3.75 years’ imprisonment for disorderly conduct, a dangerous offense and class six felony; and 3.75 years’ imprisonment for endangerment, a dangerous offense and class six felony, with the sentences to run concurrently. The superior court also awarded Godden 566 days’ presentence incarceration credit.³

²Although the Arizona Legislature amended certain of these statutes cited in this decision after Godden’s offenses in 2014, the revisions are immaterial to our resolution of this appeal. Thus, we cite to the current version of the statutes.

³A grand jury also indicted Godden on two counts of Misconduct Involving Weapons, each a class four felony, under A.R.S. § 13-3102 (Supp. 2016). The State dismissed without prejudice one of these counts, and Godden pleaded guilty to the other. The sentencing minute entry sets out the sentence imposed by the superior court on that offense, a presumptive term of 10 years’ imprisonment for misconduct involving weapons, a non-dangerous non-repetitive offense and class four felony. Godden cannot challenge his conviction on this offense on direct appeal and, instead, may only seek relief under Arizona Rule of Criminal Procedure 32. Therefore, we have not addressed Godden’s conviction and sentence on this offense, except to note that the superior court’s sentencing minute entry lists this offense as “Non Dangerous - Non Repetitive” although the transcript from the change of plea hearing and the minute

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DISCUSSION

¶5 We have reviewed the entire record for reversible error and find none. *See Leon*, 104 Ariz. at 300, 451 P.2d at 881. Godden received a fair trial. He was represented by counsel at all stages of the proceedings and was present at all critical stages or, when not present, waived his right to be present through counsel.

¶6 The evidence presented at trial was substantial and supports the verdicts. The jury was properly comprised of 12 members and the court properly instructed the jury on the elements of the charges, Godden's presumption of innocence, the State's burden of proof, and the necessity of a unanimous verdict. The superior court received and considered a presentence report, Godden was given an opportunity to speak at sentencing, and his sentences were within the range of acceptable sentences for his offenses.

¶7 The sentencing minute entry does not completely or accurately reflect the sentences imposed by the superior court. The superior court sentenced Godden as a category three offender under A.R.S. § 13-703 (Supp. 2016) because he had two historical prior felony convictions. Although Godden admitted these historical prior felony convictions in open court when he plead guilty to the misconduct involving weapons charge, *see supra* ¶ 4 n.3, the sentencing minute entry does not identify these historical prior felony convictions. We amend the sentencing minute entry to reflect the two historical prior felonies as follows:

Aggravated Assault Domestic Violence,
a class 6 Non Dangerous Felony and a
Domestic Violence Offense committed on June
7, 2011 and convicted on September 6, 2013 in
CR2011-129120-001 in Maricopa County
Superior Court.

Attempted Aggravated Assault, a class
6 Non Dangerous Felony committed on April
21, 2012 and convicted on June 21, 2012 in
CR2012-121243-001 in Maricopa County
Superior Court.

entry for that hearing reflect the superior court and the parties treated this offense as "non-dangerous but repetitive."

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¶8 The sentencing minute entry also reflects Godden was sentenced for aggravated assault, disorderly conduct, and endangerment as dangerous pursuant to A.R.S. § 13-704. Although the jury found the offenses to be dangerous, the superior court sentenced Godden on these offenses under A.R.S. § 13-703, not under A.R.S. § 13-704. We therefore correct the sentencing minute entry to reflect the court sentenced Godden for aggravated assault, disorderly conduct, and endangerment pursuant to A.R.S. § 13-703 and not A.R.S. § 13-704.

CONCLUSION

¶9 We decline to order briefing and affirm Godden's convictions and sentences as amended and corrected.

¶10 After the filing of this decision, defense counsel's obligations pertaining to Godden's representation in this appeal have ended. Defense counsel need do no more than inform Godden of the outcome of this appeal and his future options, unless, upon review, counsel finds an issue appropriate for submission to the Arizona Supreme Court by petition for review. *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984).

¶11 Godden has 30 days from the date of this decision to proceed, if he wishes, with an *in propria persona* petition for review. On the court's own motion, we also grant Godden 30 days from the date of this decision to file an *in propria persona* motion for reconsideration.



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