

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  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

JAMES MICHAEL KING, *Appellant*.

No. 1 CA-CR 16-0592  
FILED 7-6-2017

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Appeal from the Superior Court in Maricopa County  
No. 2013-004475-001  
The Honorable Bradley H. Astrowsky, Judge

**AFFIRMED**

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COUNSEL

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

Maricopa County Legal Advocate's Office, Phoenix  
By Kerri L. Chamberlin  
*Counsel for Appellant*

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**MEMORANDUM DECISION**

Judge James P. Beene delivered the decision of the Court, in which Presiding Judge Samuel A. Thumma and Judge Lawrence F. Winthrop joined.

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**B E E N E**, Judge:

¶1 This appeal was timely filed in accordance with *Anders v. California*, 386 U.S. 738 (1967) and *State v. Leon*, 104 Ariz. 297 (1969) following James King's convictions for ten counts of sexual exploitation of a minor, a class 2 felony and dangerous crime against children. King's counsel searched the record on appeal and found no arguable question of law that is not frivolous. *State v. Clark*, 196 Ariz. 530 (App. 1999). King was given the opportunity to file a supplemental brief *in propria persona* and did so. Counsel now asks this court to search the record for fundamental error. Additionally, we review issues raised by King in his supplemental brief for fundamental error. After reviewing the entire record and King's supplemental brief, we affirm King's conviction and sentence.

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

¶2 In 1999, King pleaded guilty to attempted sexual conduct with a minor, a class 3 felony and dangerous crime against children in the second degree, after sexually abusing his 9-year old niece. King served one-year in jail and was released on lifetime probation. In September 2013, probation officers searched King's computer and found what appeared to be child pornography. Police further investigated and discovered over 25,000 images and videos that contained child pornography and erotica. Police also investigated King's search history and discovered key word searches and terms looking for sexually explicit material involving minors. The State charged King with ten counts of

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<sup>1</sup> We view the facts in the light most favorable to upholding the jury's verdict and resolve all inferences against King. See *State v. Fontes*, 195 Ariz. 229, 230, ¶ 2 (App. 1998).

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sexual exploitation of a minor in violation of Arizona Revised Statutes (“A.R.S.”) section 13-3553 (2017).<sup>2</sup>

¶3 After rejecting the State’s plea offer, King proceeded to trial and the jury found him guilty on all 10 counts. Based on his prior felony conviction, King was sentenced to 280 years’ in prison with 1,043 days of presentence incarceration credit. King timely appealed his conviction. We have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution, and A.R.S. §§ 12-120.21(A)(1) (2017), 13-4031 (2017) and 13-4033(A)(1) (2017).

**DISCUSSION**

¶4 The record reflects no fundamental error in pretrial proceedings. King rejected the State’s plea offer after a *Donald* advisement, and his case proceeded to trial. *State v. Donald*, 198 Ariz. 406 (App. 2000). The superior court held appropriate pretrial hearings, including a hearing on King’s prior felony convictions and how they were to be referred to at trial pursuant to Rule 609 of the Arizona Rules of Evidence, and what character evidence could be introduced at King’s trial for sexual exploitation of a minor pursuant to Rule 404(b) and (c) of the Arizona Rules of Evidence.

¶5 The record also reflects that King received a fair trial. He was represented by counsel at all stages of the proceedings against him and was present at all critical stages. The superior court did not conduct a voluntariness hearing; however, voluntariness of King’s statements to police were not raised during trial nor did the evidence presented at trial suggest King’s statements were involuntary. *State v. Fassler*, 103 Ariz. 511, 513 (1968).

¶6 The jury was properly comprised of twelve members with three alternates.<sup>3</sup> The superior court properly instructed the jury on the elements of the charges. The key instructions concerning burden of proof, presumption of innocence, reasonable doubt, and the necessity of a unanimous verdict were also properly administered. The jury returned a unanimous verdict. The court received a presentence report, and properly

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<sup>2</sup> Absent material revisions after the date of an alleged offense, we cite a statute’s current version.

<sup>3</sup> One juror was excused during trial after failing to appear for duty.

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sentenced King based on his prior felony conviction and commission of these offenses while on probation, while taking into account mitigating factors.

¶7 King's supplemental brief raises six additional issues. First, King alleges judicial bias evidenced by the superior court sustaining more of the State's objections than defense counsel's objections and attempting to rehabilitate a prospective juror who was prejudiced against King. "A trial judge is presumed to be free of bias and prejudice, and a defendant must show by a preponderance of the evidence that the trial judge was, in fact, biased." *State v. Ramsey*, 211 Ariz. 529, 541, ¶ 38 (App. 2005) (internal quotation omitted).

¶8 King did not show judicial bias. When ruling on objections, the law does not "require that the judge rule for one side the same number of times that he rules for the other; the fact that the judge rules in favor of the prosecution more than for the defense tells us nothing[.]" *State v. Hill*, 174 Ariz. 313, 324 (1993). Further, attempting to rehabilitate a prospective juror does not show judicial bias, *see* Arizona Rule of Criminal Procedure 18.5(d), especially where, like here, the prospective juror is dismissed.

¶9 Second, King argues that the State intentionally misled the superior court and the jury. King alleges that the State's request to amend the indictment was obtained through misrepresentation, and the State lied or misrepresented witness testimony in its closing argument.

¶10 Arizona Rule of Criminal Procedure 13.5(b) allows the indictment to be amended to "correct mistakes of fact or remedy formal or technical defects[.]" Here, the indictment was amended to correct typographical errors. The amended indictment did not change the nature of the offense charged or prejudice the defendant. *See State v. Bruce*, 125 Ariz. 421, 423 (1980). Also, attorneys, including prosecutors, are given wide latitude in their closing arguments and may make all reasonable inferences based on the physical evidence and testimony presented to the jury. *State v. Comer*, 165 Ariz. 413, 426-27 (1990). In closing, the State argued that no other user had access to King's computer. Based on the surveillance officer's testimony that he believed King was the only computer user, the State's closing argument was not misleading.

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¶11 Third, King argues that police violated A.R.S. § 13-3553 when conducting their investigation of the child pornography and erotica contained on King’s hard drives by transporting and transferring the files onto a compact disc. King provides no support for his argument, therefore, the argument is waived. ARCAP 13(a)(7)(B); Ariz. R. Crim. P. 31.13(c)(1)(vi); *State v. Bolton*, 182 Ariz. 290, 299 (1995); *State v. Cons*, 208 Ariz. 409, 416, ¶ 18 (App. 2004).

¶12 Fourth, King asserts ineffective assistance of counsel. However, ineffective assistance of counsel claims must be raised in a Rule 32 proceeding, and we do not address these arguments on direct appeal. See *State v. Spreitz*, 202 Ariz. 1, 3, ¶ 9 (2002).

¶13 Fifth, King argues that the jury engaged in misconduct. King asserts that the jury could not have convicted him within one hour of jury deliberations. However, there is no evidence in the record of jury misconduct that supports King’s assertion.

¶14 Sixth, King argues that the superior court did not have jurisdiction, because the United States Supreme Court has original jurisdiction “[i]n all Cases . . . in which a State shall be Party[.]” U.S. Const. art. III, § 2, cl. 2. King has the burden of demonstrating that the jurisdiction over a particular crime vested exclusively in federal court. *State v. Verdugo*, 183 Ariz. 135, 137-38 (App. 1995). King’s argument has no merit, however, because generally state courts have exclusive jurisdiction over state offenses. *Id.* Here, the State charged King with violating A.R.S. § 13-3553, a state offense. Under the Arizona Constitution, the superior court has original jurisdiction to hear felony cases. Ariz. Const. art. VI, § 14, cl. 4. “Because the [S]tate filed and tried felony charges against Appellant[], the superior court clearly had original jurisdiction in” this case. *State v. Payne*, 223 Ariz. 555, 559, ¶ 7 (App. 2009).

**CONCLUSION**

¶15 We reviewed the entire record for reversible error and find none; therefore, we affirm the conviction and resulting sentence.

¶16 After the filing of this decision, defense counsel’s obligation pertaining to King’s representation in this appeal will end. Defense counsel need do no more than inform King 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. See *State v. Shattuck*, 140 Ariz. 582, 584-85 (1984). On the court’s own motion, King has 30 days from the date of this decision to proceed, if

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he wishes, with a *pro per* motion for reconsideration. Further, King has 30 days from the date of this decision to proceed, if he wishes, with a *pro per* petition for review.



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