

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

CEASER POLK, JR., *Appellant*.

No. 1 CA-CR 17-0075
FILED 6-8-2017

Appeal from the Superior Court in Coconino County
No. CR2015-00703
The Honorable Dan R. Slayton, Judge

AFFIRMED

COUNSEL

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

Coconino County Public Defender's Office, Flagstaff
By Brad Bransky
Counsel for Appellant

STATE v. POLK
Decision of the Court

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.

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 Ceaser Polk, Jr.'s conviction for aggravated domestic violence, a class 5 felony. Polk'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). Polk 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 Polk in his supplemental brief for fundamental error. After reviewing the entire record and Polk's supplemental brief, we affirm Polk's conviction and sentence.

FACTS AND PROCEDURAL HISTORY¹

¶2 On May 13, 2014, the Flagstaff Municipal Court issued a protective order against Polk. The protective order prevented Polk from going to or near the victim's residence. The following day, Polk violated the protective order by knocking on the windows of the victim's residence. The victim contacted the police, and Polk left. After the police arrived, Polk returned, and police informed him that there was an active restraining order against him. Polk was later charged with aggravated domestic violence.

¶3 At a bench trial, the judge convicted Polk of aggravated domestic violence. Ariz. Rev. Stat. ("A.R.S.") § 13-3601.02(A) (2017). The court considered a historical prior in sentencing Polk to 1.75 years' in prison with 29 days of presentence incarceration credit. Polk timely appealed his

¹ We view the facts in the light most favorable to upholding the verdict and resolve all inferences against Polk. See *State v. Nihiser*, 191 Ariz. 199, 201 (App. 1997).

STATE v. POLK
Decision of the Court

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).²

DISCUSSION

¶4 The record reflects no fundamental error in pretrial proceedings. Polk 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 an appropriate pretrial hearing on Polk’s prior felony convictions pursuant to Rule 609 of the Arizona Rules of Evidence.

¶5 The record also reflects Polk received a fair trial. He was represented by counsel at all stages of the proceedings and was present at all critical stages, except when he waived his presence. Polk admitted to his prior felony convictions during trial. Ariz. R. Crim. P. 17.6. The superior court did not conduct a voluntariness hearing; however, voluntariness of Polk’s statements to police were not raised by counsel nor did the evidence at trial suggest Polk’s statements were involuntary. *State v. Fassler*, 103 Ariz. 511, 513 (1968).

¶6 The State presented direct and circumstantial evidence sufficient for a reasonable person to convict Polk. The responding officer testified that Polk violated the order of protection, and Polk testified that he had prior domestic violence convictions within the past ten years. A.R.S. §§ 13-2810(A)(2) (2017), -3601.02(A).

¶7 Polk contends that his conviction should be overturned because his counsel was ineffective. 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). The superior court received a presentence report, and properly sentenced Polk based on his one prior felony conviction, while taking into account mitigating factors.

CONCLUSION

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

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

STATE v. POLK
Decision of the Court

¶9 After the filing of this decision, defense counsel’s obligation pertaining to Polk’s representation in this appeal will end. Defense counsel need do no more than inform Polk 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, Polk has 30 days from the date of this decision to proceed, if he wishes, with a *pro per* motion for reconsideration. Further, Polk 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