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

STATE OF ARIZONA, Appellee, v. ADRIEN JOSHUA ESPINOZA, Appellant.	1 CA-CR 07-0008 DEPARTMENT E **MEMORANDUM DECISION** (Not for Publication – Rule 111, Rules of the Arizona Supreme Court)

Appeal from the Superior Court in Maricopa County

Cause No. CR2005-117709-001 SE

The Honorable Sherry K. Stephens, Judge

AFFIRMED

Terry Goddard, Arizona Attorney General — Phoenix
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Criminal Appeals/Capital Litigation Section
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Attorneys for Appellant

Adrien Joshua Espinoza — Buckeye
Appellant

K E S S L E R, Presiding Judge

¶1 Defendant-appellant Adrien Joshua Espinoza ("Espinoza") filed an *Anders*[1] appeal after his conviction and sentence for one count of armed robbery, eight counts of kidnapping, and one count of aggravated assault. This Court granted Espinoza leave to file a supplemental brief *in propria persona*. Espinoza timely filed a supplemental brief raising approximately thirty issues. The Court has searched the record for fundamental error and considered all the issues raised in the supplemental brief. For the reasons set forth below, we affirm Espinoza's conviction and sentence.

FACTUAL AND PROCEDURAL HISTORY

¶2 The State indicted Espinoza on one count of armed robbery, eight counts of kidnapping, and one count of aggravated assault. Espinoza pled not guilty to all charges. The superior court conducted a jury trial.

¶3 The evidence introduced at trial showed that in June 2005 a man entered a Mesa Goodwill store shortly before closing time. He walked to the back of the store, the donation intake area, and asked one of the employees how the door was closed and locked for the night. The man left and the store closed.

¶4 While locking the front doors of the store an employee noticed a black PT Cruiser in the parking lot with a woman and the man who had asked him about how the back door locked sitting

[1] *See Anders v. California*, 386 U.S. 738 (1967).

inside. The employee went with another worker to the back of the store to throw out trash where he saw the black car drive by.

¶5 A man dressed in black, wearing a mask and carrying a rifle, then came to the back of the store and pointed the gun at the two employees and told them to put their hands on their heads and go inside the store. He next ordered them and the other store workers into an office and directed them to lay on the floor. The man then directed one of the employees to empty the contents of the safe into a black bag, after which he left the store.

¶6 A witness testified that she drove Espinoza to the Mesa Goodwill on June 4th in her black PT Cruiser. She and Espinoza entered the Goodwill, where she shopped for dresses while he went to the back of the store on his own. They left shortly before 9 p.m. and drove to the back of the building. Espinoza then exited the car and the witness parked away from the store. Espinoza returned to the vehicle 10 to 20 minutes later, gasping and wearing a stocking cap.

¶7 A search of the witness's patio area, where Espinoza was living, revealed personal checks made out to Goodwill dated June 4, 2005, a duffle bag with stocking caps and dark clothing, and a rifle in the closet off of the patio.

¶8 The jury convicted Espinoza on all charges. The superior court sentenced Espinoza to concurrent sixteen year terms on the armed robbery and kidnapping charges and imposed a ten year term on the aggravated assault charge, to run concurrently with the sentences for armed robbery and kidnapping.

ANALYSIS

¶9 Having reviewed the record, we find no reversible error. The evidence supports the verdict, the trial was conducted according to the Arizona Rules of Criminal Procedure, and the sentence was within the range allowed by law. Espinoza has submitted two letters from a third person as his supplemental brief. Collectively these letters raise thirty issues. Although some of the issues repeat one another or are closely related to other issues, we address them in the manner presented by Espinoza.

I. First Letter

¶10 Espinoza raises 21 issues in the first letter filed as his supplemental brief. Having considered all of these issues, we find no fundamental error.

I.A Confrontation

¶11 Espinosa alleges that the failure of the State to present testimony from four of the victims violates the Confrontation Clause of the United States Constitution.

Espinosa also seems to allege impropriety in defense counsel's failure to raise a Confrontation Clause objection.[2] The Sixth Amendment protects the right of a criminal defendant to "be confronted with the witnesses against him". A person is a witness against the defendant if the State's case against the defendant relies on testimonial hearsay, the person's "solemn declaration or affirmation made for the purpose of establishing or proving some fact." *Crawford v. Washington*, 541 U.S. 36, 51 (2004). Espinoza has suggested no particular evidence which he alleges is testimonial hearsay, and this Court's review of the entire record reveals none. Therefore Espinoza's confrontation right was not violated. Defense counsel's alleged failure to raise a confrontation objection implicates ineffective assistance of counsel, which cannot be raised on direct appeal and may only be raised in a petition for postconviction relief pursuant to Arizona Rule of Criminal Procedure 32. *State v. Spreitz*, 202 Ariz. 1, 3, ¶ 9, 39 P.3d 525, 527 (2002).

I.B Plea Negotiations

¶12 Espinosa argues that defense counsel unethically encouraged his mother to advise him to accept a plea agreement.

[2] Although defense counsel did not raise a confrontation objection, he did raise this issue in a Rule 20 motion arguing that there was insufficient evidence with regard to the victims who did not testify. The superior court determined that videotape showing their restraint at gunpoint and the testimony of other victims who saw the crime constituted substantial evidence and denied the Rule 20 motion.

Defense counsel's conduct of plea negotiations, advice on whether to accept a plea agreement, and possible breach of confidentiality implicate ineffective assistance of counsel. This Court does not address ineffective assistance claims on direct appeal from a criminal conviction. *Id*. Such claims should be brought under Arizona Rule of Criminal Procedure 32. *Id.*

I.C Change of Counsel

¶13 Espinoza contends that the superior court erroneously denied his request to change counsel. We review the denial of a motion to change counsel for an abuse of discretion. *State v. Cromwell*, 211 Ariz. 181, 186, ¶ 27, 119 P.3d 448, 453 (2005) (citation omitted). A trial judge addressing a defendant's request to change counsel should consider the following factors:

> whether an irreconcilable conflict exists between counsel and the accused; whether new counsel would be confronted with the same conflict; the timing of the motion; inconvenience to witnesses; the time period already elapsed between the alleged offense and trial; the proclivity of the defendant to change counsel; and the quality of counsel.

State v. Peralta, 221 Ariz. 359, 361, ¶ 5, 212 P.3d 51, 53 (App. 2009) (citations omitted). To be entitled to a change of counsel, the defendant must show a "total breakdown in communication" rather than "mere animosity". *Id.* The superior court has no obligation to act on a motion to change counsel

until the defendant proffers specific facts supporting the motion. *State v. Paris-Sheldon*, 214 Ariz. 500, 504, ¶ 8, 154 P.3d 1046, 1050 (App. 2007). A review of the record indicates that Espinoza made several motions for new counsel and the court denied them all. None of the denials was an abuse of discretion.

I.C.1 First Motion and Denial

¶14 Espinosa requested a change of counsel at a settlement conference. Espinoza stated that he was dissatisfied with his relationship with his attorney because the attorney did not make adequate efforts to communicate with Espinoza about his case. Espinoza also stated that he had argued with his attorney recently. The superior court denied Espinoza's request after counsel committed to increasing communication with Espinoza.

¶15 The superior court did not abuse its discretion in denying Espinoza's first request for change of counsel. The superior court noted that defense counsel, Mr. Gaziano, was experienced. Although some animosity existed, the court's colloquy revealed that the conflict was reconcilable and counsel was willing to work to improve the attorney-client relationship.

I.C.2 Second and Third Motions for Change of Counsel

¶16 Espinoza later renewed his request for new counsel. Bruce Peterson personally appeared at a status conference and agreed to reassign Espinoza's case. However, the next time

Espinoza appeared in court he was represented by his former attorney, Mr. Gaziano, along with an additional attorney, Ernest Quesada. Espinoza renewed his request for new counsel, stating that he could not and would not work with his attorneys. Espinoza stated that a conflict of interest existed because he had filed a civil lawsuit against his attorneys[3] and his attorneys had breached their duty of confidentiality towards him. The superior court asked Espinoza to state specifically how his attorneys had breached confidentiality, but Espinoza declined to provide specific details. The superior court denied Espinoza's request to change counsel, and Espinoza then requested that he be permitted to represent himself. The superior court delayed ruling on Espinoza's request to represent himself until his attorneys could complete a final witness interview.

[3] This Court has reviewed the online records of the superior court and located the suit Espinoza referenced. Espinoza's case number against his lawyers is CV2006-012703. A copy of the complaint is attached to Espinoza's 10-23-07 "Motion for Determination of Counsel on Appeal" which was filed in and granted by this Court. The complaint is for legal malpractice and alleges that Espinoza's attorneys breached confidentiality by revealing unspecified information to the County Attorney's office and that Espinoza suffered damages resulting from the disclosure, including unnecessary incarceration, the need to retain private counsel, and mental anguish. The complaint is date stamped 8/22/06, however the date on the signature line indicates that Espinoza signed it on 6/21/06. Gaziano and Quesada filed a motion to dismiss on 9/25/2006 which was granted on 10/23/2006.

¶17 At the next status conference Espinoza renewed his requests to change counsel and represent himself. Espinoza reiterated his belief that his attorneys had behaved unethically by breaching confidentiality but refused to specify how. Espinoza also stated that his counsel had called him names during a recent counseling session and had stated that if he rejected the State's plea offer he would not be likely to prevail at trial. Counsel admitted that the name calling occurred and informed the court that it was mutual. Defense counsel also stated that he counseled the defendant on the evidence against him and the likelihood that it would eventually be admitted at trial. The judge denied Espinoza's request to change counsel and gave him an additional week to review a tape of an interview his attorney had conducted and consider whether he still wanted to represent himself.[4]

¶18 Over the course of these two hearings, Espinoza raised three reasons for his request to change counsel: 1) an unspecified breach of confidentiality, 2) animosity in the client-counsel relationship, and 3) a conflict of interest stemming from Espinosa's initiation of civil litigation against his attorneys. Because of Espinoza's failure to state the

[4] On August 8, 2008, the superior court conducted a colloquy with Espinoza on his request to represent himself. The court found that Espinoza's decision to proceed pro per was knowing, intelligent, and voluntary and accepted Espinoza's waiver of counsel.

breach of confidentiality specifically, the superior court was correct to not consider it. *Paris-Sheldon*, 214 Ariz. at 504, ¶ 8, 154 P.3d at 1050. With respect to the animosity in the relationship, Espinoza demonstrated a mere animosity and not a total breakdown in communication. Even when name calling occurred, client and counsel engaged in a discussion of the case and evidence. Therefore the animosity did not result in a total breakdown in the attorney client relationship. The civil litigation between Espinosa and his counsel had not been filed at the time the superior court denied Espinosa's various motions for substitution. Therefore we find no error in the court's denial of substitution on that ground.

I.C.3 Espinoza's Final Request

¶19 Espinoza represented himself from August 8, 2006 through September 7, 2006. On September 7, the day of jury selection, he withdrew his waiver of counsel. Espinoza then renewed his request to have attorneys other than Gaziano and Quesada represent him and supported it by showing the superior court a copy of the civil complaint he filed against his defense counsel and bar complaints he filed against each lawyer. Although the court reviewed the documents, it declined to make them part of the record. The court again denied Espinoza's request to change counsel without stating the ground for denial. He thus was represented by Gaziano and Quesada.

¶20 The superior court did not abuse its discretion by again denying Espinoza's request for substitution of counsel. The mere filing of a bar complaint does not create a per se conflict of interest requiring the superior court to grant a motion for substitution of counsel. *State v. Michael*, 161 Ariz. 382, 384-85, 778 P.2d 1278, 1280-81 (App. 1989). Arizona follows this rule to avoid encouraging defendants to delay their ultimate conviction by filing frivolous bar complaints against their appointed counsel. *Id.* The same reasoning applies to prevent a civil complaint for legal malpractice from imposing a per se requirement that the superior court grant a motion to substitute counsel. See *Perry v. State*, 464 S.W.2d 660, 664 (Tex. Crim. App. 1971) (quoting *Chamberlain v. State*, 453 S.W.2d 490, 492 (Tex. Crim. App. 1970) (declining to adopt per se rule requiring recusal of trial judge when defendant files civil action against trial judge)). Because the civil complaint and bar complaints did not create a per se right to substitute counsel or an actual conflict of interest affecting the lawyers' abilities to be effective, *Michael*, 161 Ariz. at 384-85, 778 P.2d at 1280-81, the superior court had discretion to evaluate Espinoza's request in light of all relevant factors. In this case, the request was made on the day of jury selection, the case had been ongoing for over a year, the court had previously noted that defense counsel was competent, and meaningful

counseling had taken place notwithstanding the animosity in the relationship. In light of these factors, the superior court did not abuse its discretion in denying Espinoza's eleventh hour motion to substitute counsel. *See Peralta*, 221 Ariz. at 361, ¶ 5, 212 P.3d at 53.

I.D Advisory Counsel

¶21 Espinoza contends that appointment of his former attorneys as advisory counsel when he exercised his right to represent himself was erroneous. Appointment of advisory counsel to a defendant exercising his right to represent himself is within the superior court's discretion. *See* Ariz. R. Crim. P. 6.1(c); *State v. Martin*, 102 Ariz. 142, 145, 426 P.2d 639, 642 (1967).

¶22 Espinoza objected to his former attorneys being appointed as his advisory counsel, citing his litigation against them as a disqualifying interest. However, Espinoza's litigation did not require appointment of different counsel. *See supra* ¶ 20. Therefore, we find no error in the superior court's appointment of Espinosa's former attorneys as advisory counsel.

I.E Incident Report

¶23 Espinoza argues that admission of an unspecified report completed jointly by two persons is inadmissible hearsay because one of the two people who completed the form did not

testify. Espinosa fails to alert the Court to where in the lengthy record the report was admitted, whether an appropriate objection was made, and whether any prejudice resulted from the admission of this report. An inspection of the record does not reveal any report similar to that described in the supplemental brief. Although the lack of clarity in the supplemental brief precludes us from being certain, this contention likely relates to a witness's reliance on exhibit 182 to refresh her recollection. Exhibit 182 is a Mesa Police Department Statement of Facts which was not admitted into evidence. Defense counsel noted that there were distinct penmanships on the exhibit and voir dired the witness on the exhibit. A witness may refresh her recollection with any document regardless of how or by whom it was created. *Kinsey v. State*, 49 Ariz. 201, 214, 65 P.2d 1141, 1147 (1937). Because the document was not admitted into evidence and merely used to refresh the witness's recollection, any potential hearsay in the document is irrelevant. Additionally, the witness testified that she relied solely on the portion she wrote to refresh her recollection.

I.F Surveillance Tape

¶24 Espinosa alleges that a surveillance tape of the crime scene shows a suspicious person that was never identified as him. However, substantial other evidence, including witness testimony, stolen checks recovered from his place of abode, and

a firearm with Espinoza's fingerprints on it support the jury's conclusion of his guilt. Any potential lack of clarity in one particular piece of evidence does not justify overturning the jury's verdict.

I.G Examination Quality

¶25 Espinosa alleges that his attorney did a poor job of examining and cross examining witnesses. Defense counsel's performance in asking questions relates to ineffective assistance of counsel and may only be raised with a Rule 32 petition. *Spreitz*, 202 Ariz. at 3, ¶ 9, 39 P.3d at 527.

I.H Rifle Placement

¶26 Espinoza argues that placing a rifle, which was used as an exhibit, near the defense table unduly prejudiced the defendant by causing the jury to associate Espinoza with firearms. Nothing in the record indicates where the rifle was situated or that any party made any objection to placement of the rifle. Any potential error causing the jury to associate Espinoza with the rifle is not prejudicial in light of evidence that the rifle was found in Espinoza's residence and bore his fingerprints. *State v. Henderson*, 210 Ariz. 561, 567-68, ¶ 20, 115 P.3d 601, 607-08 (2005). Therefore, applying the standard of fundamental error, we decline to reverse on that ground.

I.I Credibility Challenge

¶27 Espinoza argues that the superior court erred by accepting the testimony of a known intravenous methamphetamine user instead of his own. The jury heard evidence that the witness had pled no contest to methamphetamine possession. We do not substitute our own credibility determinations for those of the jury. *State v. Gonzalez-Gutierrez*, 187 Ariz. 116, 118, 927 P.2d 776, 778 (1996).

I.J Potential Evidence Tampering

¶28 Espinoza contends that we should overturn his convictions because there was an opportunity for evidence to be planted. Such claims are to be made at trial. If evidence tampering is discovered after conviction which could not have been discovered prior to trial with reasonable diligence, then Espinoza may raise the claim via a Rule 32 petition. Ariz. R. Crim. P. 32.1(e).

I.K Location of Evidence

¶29 Espinoza argues that we should overturn his conviction because the stolen money was found in a key witness's residence. The fact that the stolen money was found in the witness's house was presented to the jury, along with the fact that Espinoza also lived there. We will not question the inferences the jury drew from those facts.

I.L Failure to Impeach for Bias

¶30 Espinoza argues that we should overturn his conviction because defense counsel failed to impeach a witness with evidence of bias. This claim is for ineffective assistance and must be raised via a Rule 32 petition. *Spreitz*, 202 Ariz. at 3, ¶ 9, 39 P.3d at 527.

I.M Police Report Discrepancies

¶31 Espinoza argues that we should overturn his conviction because an unspecified police report lists an eye color that is not his and mistakes his race for white. No relevant police report is part of the record on appeal, so we are unable to review this claim. Defense counsel elicited evidence that the initial information given to responding officers indicated that the robber was white rather than Hispanic. Assessing conflicting evidence is the province of the jury and this Court will not disturb their determination. *State v. Gallagher*, 169 Ariz. 202, 203, 818 P.2d 187, 188 (App. 1991) (citation omitted).

I.N Line-Up

¶32 Espinoza contends we should overturn his conviction because one witness picked someone other than Espinoza from a line-up. Defense counsel elicited evidence of that fact on cross-examination of one of the State's witnesses. We do not reweigh the evidence, and will not overturn the verdict on that

ground. *Gallagher*, 169 Ariz. at 203, 818 P.2d at 188 (citation omitted).

I.O Lack of Line-Up

¶33 Espinoza contends that his conviction and sentence should be overturned because no victim successfully selected him from a line up. We disagree. The jury heard testimony from multiple witnesses regarding their failure to select Espinoza from a line-up. The jury had the opportunity to consider that along with other evidence[5] which implicated Espinoza and we do not reweigh the evidence on appeal. *Gallagher*, 169 Ariz. at 203, 818 P.2d at 188 (citation omitted).

I.P Attorney Confidence

¶34 Espinoza argues that a comment his mother overheard between his attorneys shows that they did not believe in him and were therefore not qualified to represent him. If this impacted his representation, it implicates ineffective assistance of counsel and must be raised in a Rule 32 petition. *Spreitz*, 202 Ariz. at 3, ¶ 9, 39 P.3d at 527.

[5] Evidence implicating Espinoza included testimony from the person who drove Espinoza to and from the area of the crime around the time it happened, testimony that a firearm was recovered from the place where he resided and that bore his fingerprints, and the fact that stolen property was found in his abode near the firearm. *See* supra ¶¶ 6-7, 26.

I.Q Absence of Confession

¶35 Espinoza argues that his conviction should be overturned because he never confessed to committing the crime. We do not reweigh the evidence on appeal, and we will not overturn a conviction because the State failed to procure a confession. Other substantial evidence supported the conviction.

I.R Credibility

¶36 Espinoza provides additional content in support of his attack on a witness's credibility. We do not reweigh credibility. *Gonzalez-Gutierrez*, 187 Ariz. at 118, 927 P.2d at 778.

I.S Jury Composition

¶37 Espinoza alleges that the difference between the jurors' backgrounds and his own prevents them from being unbiased. It particularly focuses on the difference in their home values and race. A defendant does not have a right to a particular jury, or even a single juror of his particular race. *Batson v. Kentucky*, 476 U.S. 79, 85 (1986) (citation omitted). It is sufficient that the jury be chosen in a nondiscriminatory fashion from a cross section of the community. *Id.* There is no evidence of judicial bias in jury selection. The superior court also questioned all jurors for possible bias and found that they could be unbiased. This was not an abuse of discretion.

I.T Right to Testify

¶38 Espinoza contends that we should overturn his conviction because the superior court and his attorneys failed to notify him that it was his opportunity to testify. Counsel's alleged failure to preserve Espinoza's right to testify implicates ineffective assistance of counsel, and must be raised via Rule 32. *See Miller v. State*, 1 So.3d 1073, 1082 (Ala. Crim. App. 2007); *Spreitz*, 202 Ariz. at 3, ¶ 9, 39 P.3d at 527. The superior court has no duty to remind the defendant to testify absent his own assertion of that right. In fact, the superior court would risk focusing undue attention on the defendant's decision not to testify if it called Espinoza and he chose not to testify. We find no error in the superior court's decision not to request testimony from the defendant.

I.U Civil Suit

¶39 Espinoza contends that a civil suit he filed against his attorneys in 2006 precluded them from properly representing him. Issues related to counsel's possible conflict of interest must be raised via a Rule 32 petition. *Spreitz*, 202 Ariz. at 3, ¶ 9, 39 P.3d at 527.

II. Second Letter

¶40 Espinoza's second letter attached as part of his supplemental brief raises an additional nine issues. Having reviewed his contentions, we find no reversible error.

II.A Conflict of Interest

¶41 Espinoza reargues his claim that his attorneys had a conflict of interest. *See supra*, ¶ 39. He must raise this via Rule 32.

II.B Confrontation

¶42 Espinoza reargues his contention that the failure of some victims (this time 3 rather than 4) to testify violates his Confrontation Clause rights. We reject this claim. *See supra*, ¶ 11.

II.C Witness Credibility

¶43 Espinoza combines several of his previous arguments against a witness's credibility. We do not reweigh the jury's credibility determination. He also seems to contend that defense counsel did not adequately attempt to impeach the witness's testimony. This cannot be considered on direct appeal. *Spreitz*, 202 Ariz. at 3, ¶ 9, 39 P.3d at 527.

II.D Evidence Tampering

¶44 Espinoza argues we should overturn his conviction because his counsel failed to present evidence that the State's evidence may have been tampered with. Defense counsel's alleged failure to develop or present controverting evidence implicates ineffective assistance and must be raised via Rule 32. *Spreitz*, 202 Ariz. at 3, ¶ 9, 39 P.3d at 527.

II.E Sentencing Stipulation

¶45 Espinosa cites ER 1.4 ("Communication") and argues that defense counsel's stated agreement to a 16 year sentence is inappropriate. Although Espinoza includes an alleged quotation from the court indicating that counsel agreed to a 16 year sentence, he fails to provide a citation to the record. This Court's review of the transcript of the sentencing proceeding indicates that counsel did not agree to a 16 year sentence and actively advocated a 10.5 year sentence, which was the minimum sentence available. To the extent that Espinoza may intend to contend that his counsel harmed his case with other unethical conduct, he may not raise this issue on direct appeal. *Spreitz*, 202 Ariz. at 3, ¶ 9, 39 P.3d at 527.

II.F Witness Email

¶46 Espinosa alleges that his attorneys improperly handled an email from a particular witness. The witness was initially a defense witness who later informed the State that Espinoza had requested she commit perjury. After a thorough review of the record we have not located such an email from her and therefore cannot discern what significance it may have.[6] However, any

[6] While the record contains no email, it contains an unsigned handwritten letter to the witness indicating the author's substantial dissatisfaction with her decision to change sides during the trial. The witness testified that she recognized the handwriting as Espinoza's. No portion of that witness's testimony refers to the existence of an email.

contention related to his attorneys' alleged improper handling of potential evidence must be raised via Rule 32.

II.G Judicial Bias

¶47 Espinosa contends that the judge's statement that she was ready to begin trial shows bias. Espinoza waived this issue by failing to make a timely motion in the trial court.[7] *See* Ariz. R. Crim. P. 10.4(a) & cmt. Generally, judicial bias cannot be shown by in-court conduct. *State v. Emanuel*, 159 Ariz. 464, 469, 768 P.2d 196, 201 (App. 1989) (quotation omitted). Espinoza has alleged nothing to demonstrate bias other than the judge's in-court statement that she was prepared for trial. Therefore, he has failed to demonstrate bias.

II.H Attorney Confidence

¶48 Espinoza alleges that one of his attorneys did not believe in him. If this impacted the quality of his representation, the issue may only be raised via Rule 32.

II.I Access to Medication

¶49 Espinosa contends that during his trial he was denied access to psychological medications necessary to mitigate his schizophrenia. To the extent that this may have impaired his

[7] Although this Court ordinarily reviews waived issues for fundamental error in *Anders* appeals, two cases from the Arizona Supreme Court have applied waiver on this ground while conducting plenary fundamental error review of death penalty cases. *State v. Schad*, 163 Ariz. 411, 421, 788 P.2d 1162, 1172 (1989); *State v. Watkins*, 125 Ariz. 570, 575, 611 P.2d 923, 928 (1980).

ability to meaningfully participate in his trial, he must raise the issue via Rule 32. Further, in an August 8 pretrial status conference, Espinoza stated that he had no mental health problems.

CONCLUSION

¶50 For the foregoing reasons, we affirm Espinoza's conviction and sentence. Upon the filing of this decision, counsel shall inform Espinoza of the status of the appeal and his options. Defense counsel has no further obligations, 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, 684 P.2d 154, 156-57 (1984). Upon the Court's own motion, Espinoza shall have thirty days from the date of this decision to proceed, if he

desires, with a pro per motion for reconsideration or petition for review.

/S/
DONN KESSLER, Judge

CONCURRING:

/S/
PHILIP HALL, Presiding Judge

/S/
PATRICIA A. OROZCO, Judge