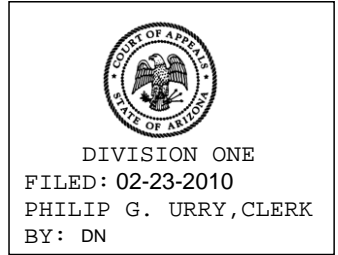


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



STATE OF ARIZONA,) 1 CA-CR 08-0893
)
Appellee,) DEPARTMENT B
)
v.) **MEMORANDUM DECISION**
) (Not for Publication - Rule
KENNETH DANIEL RULAPAUGH,) 111, Rules of the Arizona
) Supreme Court)
Appellant.)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR 2006-126552-001 DT

The Honorable Rosa Mroz, Judge

AFFIRMED AS CORRECTED

Terry Goddard, Attorney General	Phoenix
By Kent E. Cattani, Chief Counsel	
Criminal Appeals/Capital Litigation Section	
Attorneys for Appellee	
James J. Haas, Maricopa County Public Defender	Phoenix
By Christopher V. Johns, Deputy Public Defender	
Attorneys for Appellant	
Kenneth Daniel Rulapaugh, Appellant	Florence

N O R R I S, Judge

¶1 Kenneth Daniel Rulapaugh appeals from his convictions and sentences for two counts of sexual assault and one count each of kidnapping, sexual abuse, and aggravated assault. After

searching the record on appeal and finding no arguable question of law that was not frivolous, Rulapaugh's counsel filed a brief in accordance with *Anders v. California*, 386 U.S. 738 (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 Rulapaugh to file a supplemental brief *in propria persona*, and Rulapaugh chose to do so. We reject the argument raised in Rulapaugh's supplemental brief and, after reviewing the entire record, find no fundamental error. Therefore, we affirm Rulapaugh's convictions and sentences. We correct, however, the superior court's sentencing minute entry to reflect all of Rulapaugh's offenses are nonrepetitive.

FACTS AND PROCEDURAL BACKGROUND¹

¶12 Around 7:30 a.m. on May 13, 2006, police responded to a 9-1-1 call in Phoenix, Arizona. As two officers approached the subject home, they heard a woman's pleas for help. The officers entered the home and found Rulapaugh naked on top of the victim, D. D. spotted the officers and begged, "[g]et me away from him." The two officers restrained Rulapaugh and escorted D. out of the house where she stated to another

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

officer, "[Rulapaugh] tried to kill me. I almost died. He raped me. He has a knife. Thank God you are here."

¶13 Police gave Rulapaugh his *Miranda* warnings, and while being driven to the police station, Rulapaugh, on his own volition, said "he wished he could go back and . . . rape that bitch again. He wanted to kill the whore. . . . She teased me over and over again. What else was I going to do and that bitch got what she deserved."

¶14 After a four-day trial, a jury found Rulapaugh guilty of both counts of sexual assault and each count of kidnapping, sexual abuse, and aggravated assault, and found all these offenses to be dangerous under Arizona Revised Statutes ("A.R.S.") section 13-604(I), (F), (P) (Supp. 2005) (A.R.S. § 13-604(I), (F) is now A.R.S. § 13-704(A) (Supp. 2009); A.R.S. § 13-604(P) is now A.R.S. § 13-604(L) (Supp. 2009)). The superior court sentenced Rulapaugh to 10.5 years for the first count of sexual assault with 860 days of presentence incarceration credit; 10.5 years for the second count of sexual assault, to run consecutively to the first count of sexual assault; and 10.5 years for kidnapping, three years for sexual abuse, and 7.5 years for aggravated assault, all to run concurrently with each other, but consecutively to the second count of sexual assault.

¶15 We have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution and A.R.S. §§ 12-120.21(A)(1) (2003), 13-4031 (2001), and -4033(A)(1) (Supp. 2009).

DISCUSSION

¶16 In his supplemental brief, Rulapaugh argues his conviction should be vacated and dismissed pursuant to his "speedy trial" rights under Arizona Rule of Criminal Procedure 8.2 and the Arizona and United States Constitutions. We disagree.

¶17 We will affirm the superior court's ruling on a defendant's motion to dismiss for violation of speedy trial rights unless the defendant demonstrates the court abused its discretion and prejudice resulted. *State v. Spreitz*, 190 Ariz. 129, 136, 945 P.2d 1260, 1267 (1997). We need not determine whether the superior court abused its discretion because the delay did not prejudice Rulapaugh.

¶18 Here, the superior court miscalculated Rulapaugh's "last day." After the court discovered the miscalculation and determined the correct "last day," Rulapaugh's trial started two days after the corrected date, and this delay was at his counsel's request. More importantly, Rulapaugh makes no showing, and the record does not support, the two-day delay prejudiced him in any way.

¶9 In addition to reviewing those portions of the record necessary to address Rulapaugh's concern, we have reviewed the entire record for reversible error and find none. See *Leon*, 104 Ariz. at 300, 451 P.2d at 881. Rulapaugh received a fair trial. He was represented by counsel at all stages of the proceedings and was personally present at all critical stages. The jury was properly comprised of 12 members. The court properly instructed the jury on the elements of the crime, the State's burden of proof, and the necessity of a unanimous verdict. Rulapaugh was given an opportunity to speak at sentencing, and did so.

¶10 Nevertheless, the court's sentencing minute entry requires correction because it lists counts two through five as repetitive, when at sentencing the court stated all Rulapaugh's offenses were dangerous but nonrepetitive. Accordingly, we correct the sentencing minute entry to read that all of Rulapaugh's offenses are nonrepetitive. See *State v. Contreras*, 180 Ariz. 450, 453 n.2, 885 P.2d 138, 141 n.2 (App. 1994).

CONCLUSION

¶11 For the foregoing reasons, we decline to order briefing and affirm Rulapaugh's convictions and sentences.

¶12 After the filing of this decision, defense counsel's obligations pertaining to Rulapaugh's representation in this appeal have ended. Defense counsel need do no more than inform Rulapaugh 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).

¶13 Rulapaugh 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 Rulapaugh 30 days from the date of this decision to file an *in propria persona* motion for reconsideration.

/s/

PATRICIA K. NORRIS, Presiding Judge

CONCURRING:

/s/

DANIEL A. BARKER, Judge

/s/

PETER B. SWANN, Judge