

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



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

STATE OF ARIZONA,) No. 1 CA-CR 09-0051
)
Appellee,) DEPARTMENT C
)
v.) **MEMORANDUM DECISION**
)
EFRIN OSUNA-CHAVEZ,) (Not for Publication -
) Rule 111, Rules of the
Appellant.) Arizona Supreme Court)
)
)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR 2007-172912-006 DT

The Honorable Paul J. McMurdie, Judge

CONVICTION AFFIRMED, SENTENCE AFFIRMED AS MODIFIED

Terry Goddard, Arizona Attorney General Phoenix
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B R O W N, Judge

¶1 Efrin Osuna-Chavez ("Appellant") appeals from his convictions and sentences for kidnapping, aggravated assault, theft by extortion, and smuggling. Appellant'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). Finding no arguable issues to raise, counsel requests that this court search the record for fundamental error. Appellant was afforded the opportunity to file a supplemental brief *in propria persona*, but has not done so.

¶2 Our obligation in this appeal is to review "the entire record for reversible error." *State v. Clark*, 196 Ariz. 530, 537, ¶ 30, 2 P.3d 89, 96 (App. 1999). We view the facts in the light most favorable to sustaining the conviction and resolve all reasonable inferences against Appellant. See *State v. Guerra*, 161 Ariz. 289, 293, 778 P.2d 1185, 1189 (1989). Finding no reversible error, we affirm.

¶3 The State charged Appellant with three counts of kidnapping, a class 2 dangerous felony, in violation of Arizona Revised Statutes ("A.R.S.") section 13-1304 (Supp. 2009),¹ one count of aggravated assault, a class 3 dangerous felony, in violation of A.R.S. §§ 13-1203 (2001), -1204 (Supp. 2009), three counts of theft by extortion, a class 2 dangerous felony, in

¹ We cite the current version of the applicable statutes if no revisions material to this decision have since occurred.

violation of A.R.S. § 13-1804 (2001), one count of smuggling, a class 4 felony, in violation of A.R.S. § 13-2319 (Supp. 2009), and one count of misconduct involving weapons, a class 4 felony, in violation of A.R.S. § 13-3102 (Supp. 2009). The following evidence was presented at trial.

¶4 In November 2007, O.C., a Mexican national, crossed the United States-Mexico border illegally. She had agreed to pay a "coyote"² \$800 to smuggle her into the United States. After walking through the desert for several days, O.C. and the others with her were picked up by a man in a truck and taken to a house in Phoenix. Upon arrival, O.C. and the other illegal immigrants were searched by Appellant, their shoes and belts were taken, and they were placed in an empty bedroom with a boarded up window. They were only permitted to leave to use the bathroom. They were fed only ramen noodle soup and water, but because O.C. was seven months pregnant at the time, she was occasionally allowed to have milk. Appellant and the other guards allowed them to use a cellphone to call family members to make arrangements to have their fees paid. The calls were generally conducted on speakerphone in the presence of

² "Coyote" refers to a person who engages in human smuggling. See *State ex rel. Goddard v. W. Union Fin. Servs., Inc.*, 216 Ariz. 361, 363, ¶ 8, 166 P.3d 916, 918 (App. 2007).

Appellant, so they felt they had no way of asking their families for help, or to contact the police.

¶15 After approximately eight days, O.C. escaped during a planned assault on Appellant and asked a neighbor to notify the Phoenix Police Department. She proceeded to a convenience store, where she met the police and told them that she had been held against her will with several others at a nearby home. She led police to the house. After the police gave several commands in Spanish, approximately twenty to twenty-five people exited the home. They were not wearing shoes and appeared to have poor personal hygiene. After the occupants had exited, the police conducted a search of the home, where they found one of the illegal immigrants inside of a bedroom closet bound and gagged, with lacerations on his face. He had been beaten during the assault on Appellant. The police also found a gun and a kitchen knife in the house.

¶16 One of the responding police officers testified the home appeared to be a "typical" drop house,³ as it had boards over the interior windows to deter detection of the occupants

³ Drop houses are an intermediary point in the smuggling of immigrants who are not legally permitted to enter into the United States. Arizona Department of Public Safety, Drop House Awareness, www.azdps.gov/Information/Drop_Houses (last visited January 8, 2010). Common characteristics of a drop house include windows fortified in some manner, large quantities of discarded empty ramen noodle packaging, activity late at night, and suspicious persons who appear to stand guard. *Id.*

from the outside, it was largely unfurnished except for the master bedroom, there were blood stains on the carpet and dirt marks partially up the walls. They also found a large plastic bag that contained clothing, shoes, and belts.

¶17 O.C. and two others held against their will⁴ each testified that although they made arrangements with a coyote to cross the border into the United States for a fixed fee, the fees increased once they arrived at the drop house.⁵ They also testified that Appellant appeared to be in charge of taking their personal belongings when they arrived at the drop house, that he controlled the use of the cell phone, that the other guards had a gun, bats or a knife, and they feared for their lives.

¶18 O.C. testified further that she was transported to the drop house in a white truck and that the truck entered the garage of the drop house and the garage door was then closed

⁴ Further testimony revealed that all three victims were granted immunity from prosecution from the State of Arizona and the United States Government in exchange for their testimony. See *State v. Barragan-Sierra*, 219 Ariz. 276, 285-86, ¶ 27, 196 P.3d 879, 888-89 (App. 2008) (holding that conspiracy and human smuggling statutes allow the person smuggled to be convicted of conspiracy to commit human smuggling); see also 8 U.S.C. § 1325(a) (making it illegal for aliens to cross into the United States except as by authorized procedure).

⁵ O.C. also testified that she had illegally crossed the border into the United States "a bunch of times" and understood that the fees are typically increased once you arrive at the drop house.

prior to unloading the occupants. They were then searched by Appellant. She stated that she did not know where the driver of the truck went, but that he did come to the house later "two or three times." She also explained how Appellant told her that if she would have sex with him, he would let her go home. She refused his advances and he later attempted to pull her pants down. O.C. also testified that Appellant was in charge of collecting the money, saying that it needed to be deposited in Mexico and that he "would always make all of the calls for everyone."

¶9 The jury returned guilty verdicts on all counts except for the charge of misconduct involving weapons.⁶ The trial court sentenced Appellant to a total of twenty-six years⁷ imprisonment, with 431 days of presentence incarceration credit. This timely appeal followed.

¶10 We have read and considered counsel's brief and have reviewed the entire record for reversible error. See *Leon*, 104

⁶ Prior to submission of the case to the jury, the trial court entered a judgment of acquittal in favor of Appellant pursuant to Arizona Rule of Criminal Procedure 20 on the charge of misconduct involving weapons.

⁷ Upon finding a discrepancy between the oral pronouncement of sentence and a minute entry, a reviewing court must try to ascertain the trial court's intent by reference to the record. See *State v. Bowles*, 173 Ariz. 214, 215, 841 P.2d 209, 210 (App. 1992). In this case, the sentencing minute entry incorrectly states Appellant's sentence for count 3. The minute entry should be corrected to reflect that count 3 is to be served concurrent to count 7 and consecutive to count 2 and count 6.

Ariz. at 300, 451 P.2d at 881. We find none. All of the proceedings were conducted in accordance with the Arizona Rules of Criminal Procedure. The record also shows that Appellant was present and represented by counsel at all pertinent stages of the proceedings, he was afforded the opportunity to speak at sentencing, the evidence was sufficient to sustain the verdict, and the sentence imposed was within statutory limits. Appellant was given proper credit for his presentence incarceration.

¶11 Upon the filing of this decision, counsel shall inform Appellant 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). Appellant shall have thirty days⁸ from the date of this decision to proceed, if he so desires, with an *in propria persona* motion for reconsideration or petition for review.

⁸ On the court's own motion, we extend the time for filing a motion for reconsideration from fifteen days to thirty days.

¶12 Accordingly, we affirm Appellant's convictions and sentences as modified.

/s/

MICHAEL J. BROWN, Judge

CONCURRING:

/s/

PETER B. SWANN, Presiding Judge

/s/

LAWRENCE F. WINTHROP, Judge