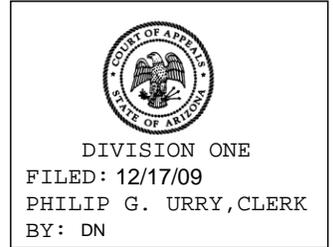


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



STATE OF ARIZONA,) 1 CA-CR 09-0212
)
Appellee,) DEPARTMENT A
)
v.) **MEMORANDUM DECISION**
)
JUAN ESPINO-TORRES,)
) (Not for Publication -
Appellant.) Rule 111, Rules of the
) Arizona Supreme Court)
)
)
)
)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2008-007464-001 DT

The Honorable Sally S. Duncan, Judge

AFFIRMED

Terry Goddard, Attorney General Phoenix
By Kent E. Cattani, Chief Counsel
Criminal Appeals Section/
Capital Litigation Section
Attorneys for Appellee

Bruce Peterson, Legal Advocate Phoenix
By Kerri L. Chamberlin, Deputy Legal Advocate
Attorney for Appellant

B A R K E R, Judge

¶1 Juan Espino-Torres ("Appellant") appeals from his convictions and sentences for five counts of sexual conduct with a minor, two class two felonies and three class six felonies, and one count of sexual abuse, a class three felony. Three counts were dangerous crimes against children. Appellant was sentenced on March 13, 2009, and timely filed a notice of appeal on March 23, 2009. 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), advising this court that after searching the entire record on appeal, she finds no arguable ground for reversal. Appellant was granted leave to file a supplemental brief *in propria persona* on or before November 24, 2009, and did not do so.

¶2 We have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution and Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1) (2003), 13-4031 (2001), and 13-4033(A) (2001). We are required to search the record for reversible error. Finding no such error, we affirm.

Facts and Procedural Background¹

¶3 Appellant was the victim's mother's boyfriend and he lived with victim and her family and was a father figure to

¹ "We view the facts in the light most favorable to sustaining the [jury's] verdict[] and resolve all inferences against appellant." *State v. Fontes*, 195 Ariz. 229, 230, ¶ 2, 986 P.2d 897, 898 (App. 1998) (internal citation omitted).

victim. Victim was twenty-two years old at the time of trial and testified about several separate incidents. Speaking about the incident that was charged as counts four, five, and six, she testified that once when she was approximately fourteen years old, appellant pushed victim into her sister's room and started taking her clothes off and kissing her mouth, neck, and touching and kissing her breasts. Victim testified that he penetrated her vagina with his fingers and also put his mouth on her vagina. Testifying about the incident charged as count seven, the victim said on another occasion shortly thereafter Appellant pushed her onto her mom's bed and grabbed her hand and put it on his penis and had her masturbate his penis until he ejaculated on her stomach. Finally, in the incident charged as counts eight and nine, the victim testified that when she was fifteen Appellant again took her clothes off and started kissing and having oral sex with her. On this occasion appellant also took his clothes off and put his penis in her vagina.

¶4 Victim stated that she called the police in 2007 out of concern for her younger sister. She agreed to make a confrontation call and it was read out loud to the jury. In the call appellant admitted to touching, kissing, and wanting to have sex with victim.

¶15 On August 18, 2008, Appellant was charged with: (1) one count of attempted molestation of a child under the age of fifteen, a class three felony and dangerous crime against children (count one); (2) two counts of sexual abuse of a child under the age of fifteen, both class three felonies and dangerous crimes against children (counts two and six); (3) one count of indecent exposure, a class six felony (count three); and (4) five counts of sexual conduct with a minor, two class two felonies and dangerous crimes against children, and three class six felonies (counts four, five, seven, eight, and nine). Appellant rejected the State's plea offer, and his case proceeded to trial. The trial spanned four days. Appellant was present and represented by counsel at all times during trial.

¶16 At trial, the State presented testimony by victim, victim's mother, Officer Piano, and a forensic expert. Victim testified as to each of the incidents in the charges. The confrontation call was read to the jury in which Appellant admitted to kissing, touching, and wanting to have sex with victim. After victim testified and the confrontation call was read, the State again offered appellant a plea offer which he did not accept. At the conclusion of the State's case, Appellant moved for a judgment of acquittal on count one, pursuant to Arizona Rule of Criminal Procedures 20. The court

denied his motion finding sufficient and substantial evidence that count one was committed. Appellant did not testify at trial and the defense did not present witnesses.

¶7 At the conclusion of trial, a twelve-person jury convicted Appellant of five counts of sexual conduct with a minor and one count of sexual abuse. At sentencing, the trial court provided appellant an opportunity to speak and then ordered the presumptive terms of twenty years in connection with counts four and five, to run consecutively, with 408 days of presentence incarceration credit on count four. In connection with counts six, seven, eight, and nine, the court imposed concurrent lifetime terms of probation.

Disposition

¶8 We have reviewed the record and have found no meritorious grounds for reversal of Appellant's convictions or for modification of the sentences imposed. See *Anders*, 386 U.S. at 744; *Leon*, 104 Ariz. at 300, 451 P.2d at 881. Appellant was present, or waived his presence, at all critical stages of the proceedings and was represented by counsel. All proceedings were conducted in accordance with the Arizona Rules of Criminal Procedure. Accordingly, we affirm.

¶9 After the filing of this decision, counsel's obligations in this appeal have ended subject to the following.

Counsel need do no more than inform Appellant of the status of the appeal and Appellant's future options, unless counsel's review reveals 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). Appellant has 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/

DANIEL A. BARKER, Judge

CONCURRING:

/s/

DIANE M. JOHNSEN, Presiding Judge

/s/

MAURICE PORTLEY, Judge