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See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 01/19/2010
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BY: GH

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,)	
)	1 CA-CR 09-0291
Appellee,)	
)	DEPARTMENT E
v.)	
)	MEMORANDUM DECISION
TRAVIS JOHN ANDERSON,)	(Not for Publication -
)	Rule 111, Rules of the
Appellant.)	Arizona Supreme Court)
)	

Appeal from the Superior Court in Maricopa County

Cause No. CR2008-169717-001 DT

The Honorable Arthur T. Anderson, Judge

AFFIRMED

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

James J. Haas, Maricopa County Public Defender	Phoenix
By Peg Green, Deputy Public Defender	
Attorney for Appellant	

K E S S L E R, Judge

¶1 Defendant-Appellant Travis John Anderson appeals his conviction of Count 1: Aggravated Assault and Count 3: Assault.¹ Counsel for Anderson 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. Although we granted Anderson leave to file a supplemental brief *in propria persona*, he has declined to do so. For the reasons that follow, we affirm Anderson's conviction and sentence.

FACTUAL AND PROCEDURAL HISTORY

¶2 In November 2008, the State charged Anderson with two counts of aggravated assault and one count of misdemeanor assault. The superior court dismissed one of the aggravated assault charges at the preliminary hearing and the defendant pled not guilty to the other two counts. The State filed an allegation of aggravating circumstances alleging that the offenses were domestic violence offenses committed in the presence of a child. On the State's motion, the remaining aggravated assault count was designated as a class one misdemeanor.

¹ Count 2 of the complaint was dismissed.

¶13 Evidence at trial revealed that Phoenix police responded to a domestic disturbance. Officer M. was the first officer to arrive on the scene. Upon arrival, the officer noticed that one victim, L., had red marks on her face and a scratch on her nose. The officer saw the other alleged victims but did not observe any injuries.

¶14 L. testified that she and her immediate family had been living with Anderson, her brother, for approximately five months prior to the incident. On the night of the incident, Anderson argued with L. and told her she had to move out within two weeks. L. told Anderson that she would stop making financial contributions to the household because she would have to leave. Anderson then insisted that L. leave immediately. L. attempted to call her husband on the defendant's telephone, but Anderson cut the telephone cord. L.'s son, A., brought L. another phone, and Anderson began hitting L. during a struggle for that phone. A. attempted to intervene, and Anderson turned and repeatedly struck A. in the head. L. testified that her injuries included a scratch to the face, ringing in her ears, and bruising on her arms. A. was injured in the head and needed ice to treat it.

¶15 Anderson presented a justification defense based on his reasonable use of force to protect his property. Anderson testified that he leases the property where the incident

occurred. Anderson presented testimony that L. had no contract or lease agreement allowing her to be in his home. Anderson asked the victims repeatedly to leave his home and they refused. Anderson then used force to remove the victims.

¶16 The superior court found Anderson guilty and sentenced him to one year of unsupervised probation and domestic violence classes. Anderson timely filed a notice of appeal twenty days after the superior court sentenced him, which is within the time limit of Arizona Rule of Criminal Procedure 31.3. This Court has 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) and 13-4033(A)(1)(Supp. 2009).

ANALYSIS

¶17 This Court has reviewed the entire record for fundamental error. After careful review of the record, we find no meritorious grounds for reversal of Anderson's conviction or modification of the sentence imposed. The evidence supports the verdict, Anderson was present and represented by counsel at all stages of the trial, and the trial was conducted in accordance with the Arizona Rules of Criminal Procedure.

¶18 We find that trial to the bench rather than a jury was proper because Anderson did not have the right to a jury trial for two misdemeanors. Defendants do not have the right to a jury trial for misdemeanor assault charges. *Phoenix City*

Prosecutor's Office v. Klausner, 211 Ariz. 177, 179, ¶¶ 7-8, 118 P.3d 1141, 1143 (App. 2005). The fact that Anderson was charged with two separate counts which could have resulted in over six months total incarceration if consecutive sentences had been imposed does not entitle him to a jury trial. *Bruce v. State*, 126 Ariz. 271, 272-73, 614 P.2d 813, 814-15 (1980). The penalty resulting from the State's decision to charge this case as a domestic violence offense does not create a right to a jury trial. *State v. Willis*, 218 Ariz. 8, 12, ¶ 16, 178 P.3d 480, 484 (App. 2008).

¶9 At sentencing, the superior court stated on the record the materials considered in sentencing, permitted Anderson to speak, and imposed a sentence which was within the statutory limit. A.R.S. § 13-902(A)(5) (Supp. 2009). Accordingly, we affirm Anderson's conviction and sentence.

¶10 Upon the filing of this decision, counsel shall inform Anderson 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, Anderson shall have thirty days from the date of this decision to proceed, if he so desires, with a pro per motion for reconsideration or petition for review.

CONCLUSION

¶11 For the foregoing reasons, we affirm Anderson's conviction and sentence.

/s/
DONN KESSLER, Judge

CONCURRING:

/s/
PHILIP HALL, Presiding Judge

/s/
PATRICIA A. OROZCO, Judge