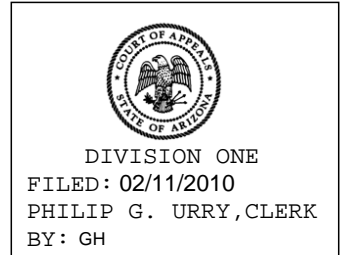


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz.R.Sup.Ct. 111(c); ARCAP 28(c);
Ariz.R.Crim.P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



STATE OF ARIZONA,) 1 CA-CR 09-0393
) 1 CA-CR 09-0396
Appellee,) (Consolidated)
)
v.) DEPARTMENT D
)
THOMAS HARRIS,) **MEMORANDUM DECISION**
) (Not for Publication -
Appellant.) Rule 111, Rules of the
) Arizona Supreme Court)

Appeal from the Superior Court in Maricopa County

Cause Nos. CR2008-131803-001 DT; CR2006-177694-001 DT

The Honorable Raymond P. Lee, Judge;
The Honorable Susan M. Brnovich, Judge

AFFIRMED

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

Maricopa County Public Defender Phoenix
by Terry J. Adams, Deputy Public Defender
Attorneys for Appellant

I R V I N E, Judge

¶1 This appeal is filed in accordance with *Anders v. California*, 386 U.S. 738 (1967) and *State v. Leon*, 104 Ariz.

297, 451 P.2d 878 (1969). Counsel for Thomas Harris, asks this court to search the record for fundamental error. Harris was given an opportunity to file a supplemental brief in propria persona. Harris has not done so. After reviewing the record, we affirm Harris' convictions and sentences for aggravated assault, assault, and violating the terms of probation.

FACTS¹ AND PROCEDURAL HISTORY

¶2 The State charged Harris with aggravated assault, a class three dangerous felony, and assault, a class three misdemeanor. At the close of the evidence, the trial court properly instructed the jury on the elements of the offense. Harris was convicted of aggravated assault, a class three felony, and assault, a class three misdemeanor.

¶3 At trial, Harris's girlfriend, R.H., testified that on the morning of May 21, 2008, Harris told her that he was going to hurt her by hurting her friends. T.M., R.H.'s friend, testified that on May 21, 2008, she and her girlfriend L. went to R.H.'s apartment to watch a basketball game. T.M.'s longtime friend, S.W., was also there to watch the game. At some point, when T.M., S.W. and L. were standing outside the apartment, they observed Harris approaching with a forty-ounce glass bottle of

¹ "We view the evidence in the light most favorable to sustaining the verdicts and resolve all inferences against [Defendant]." *State v. Nihiser*, 191 Ariz. 199, 201, 953 P.2d 1252, 1254 (App. 1997) (citation omitted).

beer in a brown paper bag. Harris appeared to be intoxicated and angry. He asked T.M. and S.W. "what the 'F' they were doing there." T.M., S.W. and Harris began to argue and Harris "swung with his left hand and hit [S.M.] and then with his right hand that's when he hit [T.M. on the head] with the bottle." R.H. was inside the apartment but saw Harris hit T.M. with a beer bottle and hit S.W. with "[a]ll the force he had." R.H. called 911.

¶4 T.M. was taken to the hospital with a head injury. The doctor who examined T.M. testified that she had "two large areas of swelling on her scalp and that's medically known as hematoma." T.M. testified that she had two knots from the bottle hitting her head and another one from falling after impact. The swelling in her head continued for 2-3 months, she has a permanent bald spot where the injury occurred, and suffers from constant headaches.

¶5 S.W. testified that Harris hit her in the jaw with his closed fist. She was "dazed for a second" and it took her "a second to get up on [her] feet." S.W. was caught by surprise and the inside of her mouth was "really kind of banged up." Right after Harris hit S.W., she saw Harris hit T.M. on the head with the beer bottle. Both S.W. and T.M. observed Harris run down the street. The two police officers who responded to the scene testified that Harris ran away from them when they approached him.

¶6 Prior to sentencing on May 6, 2009, the trial court held a trial on prior convictions. The trial court found that Harris had been convicted of two prior historical felony offenses: aggravated assault, a class six non-dangerous felony, committed on June 12, 2007 and convicted in CR2007-112818-001 DT; and failure to register as a sex offender, a class six non-dangerous felony committed from September 6, 2006 to September 12, 2006 and convicted in CR2006-177694-001 DT.

¶7 The trial court conducted the sentencing hearing in compliance with Harris' constitutional rights and Rule 26 of the Arizona Rules of Criminal Procedure. The trial court sentenced Harris to the presumptive term of 11.25 years with credit for 350 days presentence incarceration for counts one and two. The trial court ordered restitution in the amount of \$5,926.81. On the probation violation, the trial court imposed a sentence of 2.5 years, with 510 days credit, to be served consecutively to the 2008 matter.

DISCUSSION

¶8 We exercise jurisdiction pursuant to Arizona Revised Statutes sections 12-120.21(A)(1) (2003) and 13-4033(A)(1) (Supp. 2009). We review Harris' convictions and sentences for fundamental error. *See State v. Gendron*, 168 Ariz. 153, 155, 812 P.2d 626, 628 (1991).

¶9 Counsel for Harris has advised this court that after a diligent search of the entire record, she has found no arguable question of law. The court has read and considered counsel's brief and fully reviewed the record for reversible error. See *Leon*, 104 Ariz. at 300, 451 P.2d at 881. We find none. All of the proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure. So far as the record reveals, Harris was represented by counsel at all stages of the proceedings and the sentence imposed was within the statutory limits. We decline to order briefing and we affirm Harris' convictions and sentences.

¶10 Upon the filing of this decision, defense counsel shall inform Harris of the status of his appeal and of his future 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). Harris 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. On the court's own motion, we extend the time for Harris to file a pro per motion for reconsideration to thirty days from the date of this decision.

CONCLUSION

¶11 We affirm.

/s/

PATRICK IRVINE, Judge

CONCURRING:

/s/

JOHN C. GEMMILL, Presiding Judge

/s/

JON W. THOMPSON, Judge