

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



DIVISION ONE
FILED: 05-18-2010
PHILIP G. URRY, CLERK
BY: GH

STATE OF ARIZONA,) 1 CA-CR 09-0506
)
Appellee,) DEPARTMENT B
)
v.) **MEMORANDUM DECISION**
) (Not for Publication - Rule
THADDEUS RAMOIN HART,) 111, Rules of the Arizona
) Supreme Court)
Appellant.)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR 2008-175898-001 DT

The Honorable Kristin C. Hoffman, Judge

AFFIRMED

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 Joel M. Glynn, Deputy Public Defender
Attorneys for Appellant

N O R R I S, Judge

¶1 Thaddeus Ramoin Hart timely appeals from his conviction and sentence for aggravated assault. After searching the record on appeal and finding no arguable question of law that was not frivolous, Hart'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 Hart to file a supplemental brief *in propria persona*, but Hart chose not to do so. After reviewing the entire record, we find no fundamental error and therefore affirm Hart's conviction and sentence.

FACTS AND PROCEDURAL BACKGROUND¹

¶12 As three women, Y., K., and L., left Hart's home around 4:00 a.m. on December 5, 2008, Hart fired a gun in Y.'s direction. Y. fell to the ground, "flailing," thinking, "Oh, my God. He's going to kill us."

¶13 A grand jury indicted Hart on aggravated assault as to Y., and reckless endangerment as to K. and L., alleging dangerousness for all three counts under Arizona Revised Statutes ("A.R.S.") section 13-604(P) (Supp. 2008) (this section is now A.R.S. § 13-704(L) (2010)). A jury convicted Hart of aggravated assault, found the crime to be dangerous,² and

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

²The sentencing transcript reflects the superior court found Hart guilty of "aggravated assault, [a] Class 3 dangerous felony." The court went on, however, to describe the aggravated assault as "non-dangerous." The sentencing minute entry described the offense as dangerous, and this minute entry is

acquitted him of the reckless endangerment counts. The superior court sentenced Hart to the presumptive term of 7.5 years, with 187 days presentence incarceration credit.

DISCUSSION

¶14 We have reviewed the entire record for reversible error and find none. See *Leon*, 104 Ariz. at 300, 451 P.2d at 881. Hart was represented by counsel at all stages of the proceedings and was personally present at all critical stages. The jury was properly comprised of eight members. The court properly instructed the jury on the elements of the crime, the State's burden of proof, Hart's presumption of innocence, and the necessity of a unanimous verdict. The superior court reviewed and considered a presentence report, Hart was given an opportunity to speak at sentencing, and Hart's sentence was within the range of acceptable sentences for his offense. See A.R.S. § 13-604(I) (Supp. 2008) (this section is now A.R.S. § 13-704(A) (2010)).

consistent with the jury's explicit finding the offense was dangerous as reflected in the court's May 4, 2009 minute entry and the May 4, 2009 trial transcript. The jury verdict form clearly states a finding of dangerousness, the verdict was read in open court, and each juror was polled and verified this was his or her verdict. Thus, the sentencing transcript's reference to "non-dangerous" is incorrect. See *State v. Bowles*, 173 Ariz. 214, 841 P.2d 209 (App. 1992).

CONCLUSION

¶15 For the foregoing reasons, we decline to order briefing and affirm Hart's conviction and sentence.

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

¶17 Hart 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 Hart 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