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

STATE OF ARIZONA, Appellee, v. RYAN MICHAEL KAVOKA, Appellant.	)	No. 1 CA-CR 09-0516
	)	DEPARTMENT D
	)	**MEMORANDUM DECISION**
	)	(Not for Publication – Rule 111, Rules of the Arizona Supreme Court)

Appeal from the Superior Court in Maricopa County

Cause No. CR 2008-030870-001 SE

The Honorable Glenn M. Davis, Judge

CONVICTION AND SENTENCE AFFIRMED

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

Sharmila Roy — Laveen
Attorney for Appellant

J O H N S E N, Judge

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

297, 451 P.2d 878 (1969), following Ryan Michael Kavoka's conviction of aggravated assault. Kavoka's counsel has searched the record and found no arguable question of law that is not frivolous. *See Smith v. Robbins*, 528 U.S. 259 (2000); *Anders*, 386 U.S. 738; *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999). Kavoka was given the opportunity to file a supplemental brief but did not do so. Counsel now asks this court to search the record for fundamental error. After reviewing the entire record, we affirm Kavoka's conviction and sentence.

FACTUAL AND PROCEDURAL HISTORY

¶2 At about 6 p.m. on October 28, 2006, the victim, S.P., was walking from his apartment to his sister's apartment in the same complex.[1] He and his brother got into an altercation with some other individuals in the apartment complex. The exact circumstances of the fight are unclear, but the record suggests that S.P.'s brother threw a beer bottle and injured one of the other individuals. After the fight, S.P. returned to his apartment.

¶3 About 11:00 p.m. the same evening, S.P. again set out for his sister's apartment. While entering her apartment through the patio door, he heard a voice yell at him, heard gun

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

shots and then he felt pain in his stomach. S.P. had sustained graze wounds to his stomach and his finger.

¶4 Police found shell casings on the patio of the apartment next door and bullet strikes in S.P.'s sister's apartment. A gun was found in an overturned barbecue on the patio of a nearby apartment. On December 2, 2006, Officer Dailey interviewed Kavoka, who was in custody on an unrelated charge. Kavoka admitted to shooting S.P. When asked why he had shot S.P., Kavoka stated he was intoxicated and was angry at "the guys that busted the beer bottle over [his] homie's head."

¶5 The State charged Kavoka with one count of aggravated assault, a dangerous offense. After a five-day jury trial, the jury found Kavoka guilty. The superior court sentenced Kavoka to a five-year prison term, the minimum sentence for a Class 3 dangerous felony.

¶6 Kavoka timely appealed. We have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution, and Arizona Revised Statutes sections 12-120.21(A)(1) (2003), 13-4031 (2010) and -4033 (2010).

DISCUSSION

¶7 In his opening brief, Kavoka suggests the superior court erred by determining he was competent for trial. His lawyer asserts Kavoka "did not remember any details about the

alleged offense and appeared unable to assist counsel" in his trial. However, prior to trial, the parties agreed to accept the competency opinion of Dr. Gary Freitas, and, after an examination, Freitas concluded Kavoka was competent. In support of that conclusion, Freitas noted that Kavoka perfectly answered questions on case history and validity, as well as nearly 90 percent of the legal questions.

¶8 Kavoka's counsel also questions the voluntariness of his statements during his police interview. Although a transcript of the interview discloses that police made misrepresentations to Kavoka about their investigation and matters relating to the crime, an interrogator's misrepresentations to a suspect about the investigation do not render the suspect's subsequent confession involuntary. *See State v. Winters,* 27 Ariz. App. 508, 511, 556 P.2d 809, 812 (1976) ("deception alone does not render a statement inadmissible"). In the absence of threats, violence or other evidence tending to show Kavoka's will had been overborne, the totality of the circumstances indicate his confession was voluntarily. *See id.*

¶9 Additionally, the detective who questioned Kavoka did not promise leniency or offer any benefit to him. *See State v. Walton*, 159 Ariz. 571, 578-79, 769 P.2d 1017, 1025-26 (1989)

(confession voluntary despite interrogator's urging suspect to "[g]ive yourself a chance" and assuring him "[i]t's nothing that can't be worked out"); *State v. McVay*, 127 Ariz. 18, 20, 617 P.2d 1134, 1136 (1980) (statements of opinion or about a mere possibility are insufficient to render a confession involuntary).

¶10 The record reflects Kavoka received a fair trial. He was represented by counsel at all stages of the proceedings against him and was present at all critical stages. The court held appropriate pretrial hearings. The court held a *Donald* hearing and a voluntariness hearing.

¶11 The State presented both direct and circumstantial evidence sufficient to allow the jury to convict. The jury was properly comprised of eight members. The court properly instructed the jury on the elements of the charges, the State's burden of proof and the necessity of a unanimous verdict. The jury returned a unanimous verdict, which was confirmed by juror polling. The court received and considered a presentence report and addressed its contents during the sentencing hearing and imposed a legal sentence on the charges arising out of the crimes of which Kavoka was convicted.

CONCLUSION

¶12 We have reviewed the entire record for reversible error and find none. *See Leon*, 104 Ariz. at 300, 451 P.2d at 881.

¶13 After the filing of this decision, defense counsel's obligations pertaining to Kavoka's representation in this appeal have ended. Defense counsel need do no more than inform Kavoka 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. *See State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984). On the court's own motion, Kavoka has 30 days from the date of this decision to proceed, if he wishes, with a *pro per* motion for reconsideration. Kavoka has 30 days from the date of this decision to proceed, if he wishes, with a *pro per* petition for review.

/s/_____
DIANE M. JOHNSEN, Judge

CONCURRING:

/s/_____
PATRICIA A. OROZCO, Presiding Judge

/s/_____
JON W. THOMPSON, Judge