

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



DIVISION ONE
FILED: 08-03-2010
PHILIP G. URRY, CLERK
BY: DN

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

STATE OF ARIZONA,) 1 CA-CR 09-0567
)
Appellee,) DEPARTMENT C
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
ANDREW JOHN MUNOZ,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2008-175128-004 DT

The Honorable Michael W. Kemp, 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 Stephen R. Collins, Deputy Public Defender
Attorneys for Appellant

I R V I N E, Presiding 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 Andrew John Munoz

("Munoz") asks this court to search the record for fundamental error. Munoz was given an opportunity to file a supplemental brief in propria persona. Munoz has not done so. After reviewing the record, we affirm Munoz's convictions and sentences for aggravated assault.

FACTS AND PROCEDURAL HISTORY

¶2 On December 11, 2008, the grand jury issued an indictment, charging Munoz with two counts of aggravated assault against a peace officer, class two dangerous felonies. At the close of the evidence, the trial court properly instructed the jury on the elements of the offenses. The jury convicted Munoz of the lesser-included offenses of aggravated assault for each count.

¶3 The trial court conducted the sentencing hearing in compliance with Munoz's constitutional rights and Rule 26 of the Arizona Rules of Criminal Procedure. The trial court sentenced Munoz to concurrent presumptive terms of 7.5 years' imprisonment in the Arizona Department of Corrections. Additionally, the court credited Munoz with 226 days of pre-sentence incarceration.

DISCUSSION

¶4 We exercise jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution and Arizona Revised Statutes section 12-120.21(A)(1) (2003). We review Munoz's

convictions and sentences for fundamental error. See *State v. Gendron*, 168 Ariz. 153, 155, 812 P.2d 626, 628 (1991).

¶15 We note that the record provides no evidence that a voluntariness hearing was held. Nevertheless, defense counsel made no objection on the basis of voluntariness to the introduction of any of Munoz's prior statements. In fact, no claim or suggestion was presented, either by the evidence or by counsel, that Munoz's prior statements were involuntary. Consequently, we find that no separate voluntariness hearing was required. See *State v. Peats*, 106 Ariz. 254, 257, 475 P.2d 238, 241 (1970).

¶16 Counsel for Munoz has advised this court that after a search of the entire record, he 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, Munoz 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 Munoz's convictions and sentences.

¶17 Upon the filing of this decision, defense counsel shall inform Munoz 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). Munoz 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 Munoz to file a pro per motion for reconsideration to thirty days from the date of this decision.

CONCLUSION

¶8 We affirm Munoz's convictions and sentences.

_____/s/_____
PATRICK IRVINE, Presiding Judge

CONCURRING:

_____/s/_____
MICHAEL J. BROWN, Judge

_____/s/_____
DONN KESSLER, Judge