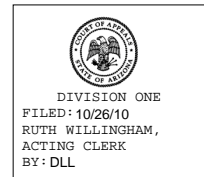


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) No. 1 CA-CR 09-0595
)
Appellee,) DEPARTMENT B
)
v.) **MEMORANDUM DECISION**
)
DANIEL TRISTE,) (Not for Publication -
) Rule 111, Rules of the
Appellant.) Arizona Supreme Court)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR 2002-098294

The Honorable John R. Hannah, 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's Office Phoenix
By Terry J. Reid, Deputy Public Defender
Attorneys for Appellant

G E M M I L L, Judge

¶1 Daniel Triste appeals his convictions and sentences for three counts of sexual conduct with a minor fifteen years of age or over, class six felonies; one count of sexual conduct

with a minor under the age of fifteen years, a class two felony and a dangerous crime against children; and one count of sexual abuse of a minor under the age of fifteen years, a class three felony and a dangerous crime against children. Triste's counsel filed a brief in compliance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), stating that he has searched the record and found no arguable question of law and requesting that this court examine the record for reversible error. Triste was afforded the opportunity to file a supplemental brief *in propria persona* but did not do so. See *State v. Clark*, 196 Ariz. 530, 537, ¶ 30, 2 P.3d 89, 96 (App. 1999). For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 "We view the facts and all reasonable inferences therefrom in the light most favorable to sustaining the convictions." *State v. Powers*, 200 Ariz. 123, 124, ¶ 2, 23 P.3d 668, 669 (App. 2001). For five years, Daniel Triste was having sexual intercourse with his wife's cousin, R.G., a minor child. Triste lived in Mexico, but would often legally come to Arizona for work. When Triste was visiting Arizona, he would stay with R.G.'s family. Triste began sexually abusing R.G. when she was ten years old.

¶3 Triste started by developing a relationship with R.G. Initially, he kissed, hugged, and inappropriately touched her.

Then, when R.G. was eleven, Triste began having sexual intercourse with her. Triste had sexual intercourse with R.G. three more times after she turned fifteen. For years, R.G. did not tell anyone what Triste was doing to her because she was afraid and Triste told her it was a secret.

¶4 On October 2, 2002, R.G. finally got the courage to tell her school counselor, S.J., what Triste was doing to her. S.J. immediately contacted the police department. The police detectives convinced R.G. to make a confrontation phone call to Triste. A confrontation call is a common tool used by police detectives to facilitate a phone call between the victim and the perpetrator of the abuse in order to get the perpetrator to acknowledge the sex acts that occurred. During the confrontation call, Triste assured R.G. that she could not be pregnant because he had "pull[ed] out in time." This confirmed R.G.'s allegations that Triste had engaged in sexual intercourse with her.

¶5 On October 11, 2002, the Grand Jurors of Maricopa County returned an indictment against Triste, charging him with three counts (counts one through three) of sexual conduct with a minor fifteen years of age or over, all class six felonies; two counts (counts four and five) of sexual conduct with a minor under the age of fifteen years, class two felonies and dangerous crimes against children; and one count (count six) of sexual

abuse of a minor under the age of fifteen years, a class three felony and a dangerous crime against children. Triste appeared for a not guilty arraignment on October 21, 2002. During the arraignment, the trial court warned Triste that the trial could proceed in his absence should he fail to appear. The trial was continued twice, and a final trial date was set for May 15, 2003.

¶6 On April 13, 2003, \$27,000 bond was posted for the release of Triste. The bond receipt filed on April 16, 2003 indicated that there was an Immigration and Naturalization Service ("INS") hold on Triste.

¶7 The State filed a Motion to Try Defendant in Absentia on May 5, 2003. In a Special Investigations Section Report written on May 6, 2003, it was noted that Triste had bonded out of jail on April 14, 2003 and was detained by INS for deportation to Mexico. Moreover, Triste signed an INS form (I-826) agreeing to voluntarily leave the country and was returned to Mexico. Pursuant to information obtained from the Phoenix office of the Department of Homeland Security, Immigration and Customs Enforcement, Triste had the option of voluntarily returning to the United States to face trial. To do so, all Triste had to do was present a court order to appear for trial to the Customs/Immigration officials at the United States/Mexico border and he would have been granted a Public Interest Parole

to enter the country. The trial court granted the State's Motion to Try Defendant in Absentia, noting that Triste had been advised at his arraignment hearing that he could be tried in his absence if he failed to appear.

¶18 A two-day jury trial began on May 15, 2003, in Triste's absence. On the second day of trial, the trial court granted the State's Motion to Amend Count Five to conform to the evidence that the alleged victim (R.G.) was fifteen years of age or older at the time of this particular offense, reducing the severity of the felony from class two to class six. Further, the trial court granted Defendant's Rule 20 Motion for Directed Verdict as to count three. The jury returned guilty verdicts for all the remaining counts.

¶19 On July 31, 2009, the trial court sentenced Triste to the presumptive term of one year in prison for counts one, two, and five; the presumptive term of five years for count six; and life in prison, with a minimum of 35 years required to be served before eligibility for parole, for count four. All sentences were ordered to be served consecutively. Additionally, Triste received a credit of 898 days for pre-sentence incarceration.

DISCUSSION

¶10 Having considered defense counsel's brief and examined the record for reversible error, *see Leon*, 104 Ariz. at 300, 451 P.2d at 881, we find none. The sentence imposed falls within

the range permitted by law, and the evidence presented supports the conviction. As far as the record reveals, Triste was represented by counsel at all stages of the proceedings, and these proceedings were conducted in compliance with his constitutional and statutory rights and the Arizona Rules of Criminal Procedure.

¶11 Pursuant to *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984), counsel's obligations in this appeal have ended. Counsel need do no more than inform Triste of the disposition of the appeal and his future options, unless counsel's review reveals an issue appropriate for submission to the Arizona Supreme Court by petition for review. Triste has thirty days from the date of this decision in which to proceed, if he desires, with a *pro se* motion for reconsideration or petition for review.

CONCLUSION

¶12 The convictions and sentences are affirmed.

_____/s/_____
JOHN C. GEMMILL, Presiding Judge

CONCURRING:

_____/s/_____
PATRICIA K. NORRIS, Judge

_____/s/_____
MAURICE PORTLEY, Judge