

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



DIVISION ONE
FILED: 08/17/2010
RUTH WILLINGHAM,
ACTING CLERK
BY: GH

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,)
) No. 1 CA-CR 09-0651
)
 Appellee,) DEPARTMENT E
)
 v.) **MEMORANDUM DECISION**
)
 MATTHEW SHERMAN,) (Not for Publication -
) Rule 111, Rules of the
 Appellant.) Arizona Supreme Court)
)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR 2008-157317-001 DT

The Honorable Robert L. Gottsfield, Judge

AFFIRMED

Terry Goddard, Arizona 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 Margaret M. Green, Deputy Public Defender
Attorneys for Appellant

H A L L, Judge

¶1 Matthew Sherman (defendant) appeals from his conviction and the sentence imposed.

¶2 Defendant's appellate 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), advising that, after a diligent search of the record, she was unable to find any arguable grounds for reversal. This court granted defendant an opportunity to file a supplemental brief, which he has not done. See *State v. Clark*, 196 Ariz. 530, 537, ¶ 30, 2 P.3d 89, 96 (App. 1999).

¶3 We review for fundamental error, error that goes to the foundation of a case or takes from the defendant a right essential to his defense. See *State v. King*, 158 Ariz. 419, 424, 763 P.2d 239, 244 (1988). We view the evidence presented in a light most favorable to sustaining the verdict. *State v. Cropper*, 205 Ariz. 181, 182, ¶ 2, 68 P.3d 407, 408 (2003). Finding no reversible error, we affirm.

¶4 On December 24, 2008, defendant was charged by indictment with one count of aggravated assault (Count I - victim G.M.), a class five felony, in violation of Arizona Revised Statutes (A.R.S.) section 13-1204(A)(8) (2010); one count of aggravated assault (Count II - victim G.M.), a class three felony, in violation of A.R.S. § 13-1204(A)(9); and one count of aggravated assault (Count III - victim P.P.), a class

three felony, in violation of A.R.S. § 13-1204(A)(8). The following evidence was presented at trial.

¶15 On July 10, 2008, Officer P.P. and Officer G.M. of the Graham County Sheriff's Office were instructed to transport defendant, a prison inmate, to a doctor's appointment in Phoenix. They were scheduled to leave the jail at 10:00 a.m. and they instructed defendant to use the restroom before leaving. Despite the officers' admonition to use the restroom before leaving, defendant repeatedly asked the officers to stop so he could use the restroom. The officers informed him that they could not stop until they reached the doctor's office.

¶16 When they arrived at the doctor's office, Officer G.M. obtained the key to the restroom and both officers escorted defendant to the restroom. After defendant finished in the restroom, the officers proceeded to escort him up the stairs to Dr. J.T.'s office. When Officer G.M. rang the bell to inform Dr. J.T.'s staff that they had arrived, defendant "latched" onto the officer's right bicep with his mouth. As defendant bit Officer G.M., he also pressed down on the officer's holster and began pulling on his gun.

¶17 Dr. J.T. quickly realized what was occurring and instructed his staff to call 9-1-1. During the officers' attempt to subdue defendant, defendant kicked Officer P.P. in

the chest. Defendant was eventually subdued and the officers and Dr. J.T. escorted him back to the patrol car.

¶18 After a four-day trial, the jury found defendant guilty of the lesser included offense of disorderly conduct on Count I, a class one misdemeanor, and not guilty as to Counts II and III. The trial court sentenced defendant to a six-month jail term.

¶19 We have read and considered counsel's brief and have searched the entire 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. Defendant was given an opportunity to speak before sentencing, and the sentence imposed was within statutory limits. Furthermore, based on our review of the record, there was sufficient evidence for the jury to find that defendant committed the offense for which he was convicted.

¶10 After the filing of this decision, counsel's obligations pertaining to defendant's representation in this appeal have ended. Counsel need do no more than inform defendant of the status 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. *See State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984). Defendant has thirty days from the date of this

decision to proceed, if he desires, with a pro per motion for reconsideration or petition for review. Accordingly, defendant's conviction and sentence are affirmed.

 /s/_____
PHILIP HALL, Judge

CONCURRING:

 /s/_____
DIANE M. JOHNSEN, Presiding Judge

 /s/_____
PATRICK IRVINE, Judge