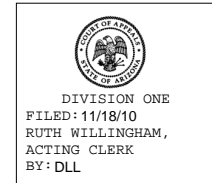


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED  
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE



STATE OF ARIZONA, ) 1 CA-CR 09-0698  
)  
Appellee, ) DEPARTMENT B  
)  
v. ) **MEMORANDUM DECISION**  
) (Not for Publication -  
) Rule 111, Rules of the  
DONTE DION CLARKE, ) Arizona Supreme Court)  
)  
Appellant. )  
)

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Appeal from the Superior Court in Maricopa County

Cause No. CR2008-171210-002 SE

The Honorable Teresa A. Sanders, Judge

**AFFIRMED**

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

Law Offices of Robert Gaffney Scottsdale  
by Robert Gaffney  
Attorneys for Appellant

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**P O R T L E Y**, Judge

¶1 Defendant Donte Dion Clark challenges his convictions  
and sentences for child prostitution and related offenses. His

counsel filed a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967) and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969). He advised us that he searched the entire record but was unable to discover any arguable questions of law. As a result, he requests that we conduct an *Anders* review of the record. Defendant did not file a supplemental brief.

#### **FACTS<sup>1</sup>**

¶2 During an undercover prostitution sting in north Phoenix on November 15, 2008, police arrested Whitney Sharp and W.P., a minor. After further investigation, Defendant was arrested on November 18, 2008, and a direct complaint was filed alleging that he had caused a minor to engage in prostitution, a class 2 felony. He was subsequently indicted by a grand jury for sex trafficking, multiple counts of child prostitution, attempted child prostitution, transporting persons for purposes of prostitution, and aggravated assault.

¶3 Defendant pled not guilty. In spite of a plea offer and a settlement conference, the case proceeded to trial on Counts 1-6,<sup>2</sup> and 14-17, which were presented to the jury sequentially as Counts 1-10.

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<sup>1</sup> We review the facts in the light most favorable to sustaining the verdict. See *State v. Guerra*, 161 Ariz. 289, 293, 778 P.2d 1185, 1189 (1989).

<sup>2</sup> Count 7 was dismissed without prejudice just before jury selection. Counts 8-13 were tried separately because they involved Ms. Sharp.

¶4 In addition to the police officers and Ms. Sharp, the jury heard testimony from W.P. She testified that she was fifteen years old when the Defendant paid for her to travel from California to Phoenix during late October 2008. Although she thought she was going to spend time with her boyfriend, Tracy Jones, three days after her arrival, Defendant encouraged Tracy to hit W.P. to force her into prostitution.

¶5 Once W.P. was compliant, Defendant told Ms. Sharp to help W.P., and Ms. Sharp provided W.P. with clothes and did W.P.'s hair and makeup. Defendant then took both women out on a "double date" and demanded that W.P. earn \$500. Afterwards, and while she was eating pizza, Defendant urinated on W.P. for talking back to Tracy, grabbed her by her hair, pulled her into the kitchen, and tased her. She was also tased on a different occasion while she was in the bathroom/shower. In fact, W.P. was threatened with death and beatings if she tried to run away.

¶6 W.P. testified about her role in prostitution. Generally, she and Ms. Sharp would walk a track or Ms. Sharp would make the dates, and W.P. would accompany her. She once earned \$500 from a date. On another occasion, W.P. received \$200 for sex acts. W.P. used the name of "Diamond" for prostitution purposes, and she was listed as "Diamond" on Craig's List ads.

¶17 After the presentation of evidence and before closing arguments, the jury was duly instructed, including the instruction for accomplice liability. The jury then had to weigh the evidence, including the credibility of the witnesses, to determine the facts before applying the law to those facts. Subsequently, the jury found that Defendant was guilty of: Count 1, sex trafficking; Counts 2, 3, 4, and 5, child prostitution; Count 6, attempted child prostitution; and Counts 8 and 9, aggravated assault.<sup>3</sup> He was acquitted of Count 7, aggravated assault.

¶18 Defendant was sentenced to prison as follows: four years for sex trafficking, with 306 days of presentence incarceration credit; seven years for each of the four child prostitution count convictions, consecutive to each other; three and one-half years for aggravated assault; and one year each for the last two aggravated assault convictions. The sex trafficking sentence was concurrent with the aggravated assault sentences, which also had 306 days of presentence incarceration credit, but consecutive to the child prostitution sentences.

¶19 We have jurisdiction over this appeal pursuant to Article 6, Section 9, of the Arizona Constitution, and Arizona

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<sup>3</sup> After Count 5 of the indictment was dismissed during trial, the remaining counts were renumbered sequentially when presented to the jury.

Revised Statutes ("A.R.S.") sections 12-120.21(A)(1) (2003), 13-4031, and -4033(A)(1) (2010).

#### **DISCUSSION**

¶10 We have read and considered counsel's brief, as well as searching the entire record for reversible error. *See Leon*, 104 Ariz. at 300, 451 P.2d at 881. We find none.

¶11 The record on appeal demonstrates that all of the proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure. Defendant was indicted, and represented by counsel at each proceeding thereafter. He was given full opportunity to cross-examine all of the State's witnesses, as well as the opportunity to present any evidence in his own defense. The jury was properly instructed. Finally, each sentence imposed was within the statutory limits for his conviction.

#### **CONCLUSION**

¶12 Once we file this decision, counsel's obligation to represent Defendant in this appeal has 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, 585, 684 P.2d 154, 157 (1984). Defendant can, if desired, file a

motion for reconsideration or petition for review pursuant to the Arizona Rules of Criminal Procedure.

¶13 Accordingly, we affirm Defendant's convictions and sentences.

/s/

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MAURICE PORTLEY, Judge

CONCURRING:

/s/

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JOHN G. GEMMILL, Presiding Judge

/s/

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PATRICIA K. NORRIS, Judge