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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



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FILED: 07-29-2010  
PHILIP G. URRY, CLERK  
BY: DN

STATE OF ARIZONA, ) 1 CA-CR 09-0748  
)  
Appellee, ) DEPARTMENT A  
)  
v. ) **MEMORANDUM DECISION**  
) (Not for Publication -  
ABEL CRUZ TRUJILLO, ) Rule 111, Rules of the  
) Arizona Supreme Court)  
Appellant. )  
)

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Appeal from the Superior Court in Maricopa County

Cause No. CR2009-110144-001 DT

The Honorable Arthur T. Anderson, 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

James J. Haas, Maricopa County Public Defender Phoenix  
by Kathryn Petroff, Deputy Public Defender  
Attorney for Appellant

Abel Cruz Trujillo Florence  
Appellant

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W I N T H R O P, Judge

¶1 Abel Cruz Trujillo ("Appellant") appeals his  
conviction and sentence for aggravated assault. Appellant's

counsel has filed a brief in accordance with *Smith v. Robbins*, 528 U.S. 259 (2000); *Anders v. California*, 386 U.S. 738 (1967); and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), stating that she has searched the record on appeal and found no arguable question of law that is not frivolous. Appellant's counsel therefore requests that we review the record for fundamental error. See *State v. Clark*, 196 Ariz. 530, 537, ¶ 30, 2 P.3d 89, 96 (App. 1999)(stating that this court reviews the entire record for reversible error). This court afforded Appellant the opportunity to file a supplemental brief *in propria persona*, and he has done so, raising certain issues, which we address below.

¶2 We have appellate jurisdiction pursuant to the Arizona Constitution, Article 6, Section 9, and Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1) (2003), 13-4031 (2010), and 13-4033(A) (2010). Finding no reversible error, we affirm Appellant's conviction and sentence.

#### **FACTS AND PROCEDURAL HISTORY**

¶3 We review the facts in the light most favorable to sustaining the verdict and resolve all reasonable inferences against Appellant. See *State v. Kiper*, 181 Ariz. 62, 64, 887 P.2d 592, 594 (App. 1994).

¶4 On February 17, 2009, a grand jury issued an indictment, charging Appellant with aggravated assault with a deadly weapon or dangerous instrument, a class three and

dangerous felony. See A.R.S. §§ 13-1203 (2010), -1204 (2010).<sup>1</sup>  
The State later alleged that Appellant had at least three historical prior felony convictions.

¶15 At trial, the State presented the following evidence:  
On February 7, 2009, at approximately 4:00 p.m., Officer John Wing of the Phoenix Police Department arrived at a trailer park after receiving dispatch about a stabbing. Officer Wing was directed by bystanders to the back of the trailer park, where Appellant was standing. After exiting his patrol car, Officer Wing asked Appellant to put his hands on his head. In the meantime, Officer Ryan Merrill arrived. Appellant was placed in handcuffs, and Officer Wing located a knife on the tailgate of Appellant's pickup truck. Appellant was placed in the backseat of Officer Merrill's patrol car and, following appropriate Miranda warnings, Officer Merrill interviewed Appellant. Appellant reported that the stabbing victim had approached him while Appellant had been looking at his truck. Appellant introduced himself to the victim, but the victim responded by providing his nickname-"Psycho"-and punching Appellant in the face. Appellant's glasses were knocked off, and as he put them back on, Appellant told the victim, "I'm gonna whup your ass." The victim turned and started to move away from Appellant, but

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<sup>1</sup> We cite the current version of the applicable statute because no revisions material to this decision have occurred.

while doing so, the victim felt two strikes to his back. The victim's knees buckled as he reached around his side and felt his back bleeding. He got up and ran to a friend's house for assistance. Officer Merrill testified that Appellant became upset after the officer informed him that stabbing the victim in the back could not constitute self defense, and, in response, Appellant had tried to change his story.

¶16 Appellant testified at trial that the victim had not been moving away from him when he had stabbed the victim. Appellant claimed that the victim had sucker-punched him, and then the victim's friend had exited from a truck that had been idling nearby. Appellant retrieved his glasses, pulled out his knife, and told the two men: "Come on." The victim rushed him, Appellant ducked, and as the victim followed through on his swing to hit Appellant again, Appellant stabbed the victim twice in the back. The victim retreated to another friend's house, and the friend at the scene ran back to his truck. Appellant chased the friend at the scene, but refrained from further violence after detecting a woman and child in the friend's truck. Appellant placed the knife on the tailbed of his truck and waited for the authorities to arrive, believing that he had acted in self defense. It was at this time that Officer Wing arrived at the scene. Appellant also admitted at trial that he had three prior felony convictions.

¶7 The jury found Appellant guilty as charged and further found that the offense was dangerous. The court sentenced Appellant to a slightly aggravated term of 12.5 years' imprisonment in the Arizona Department of Corrections and credited him for 157 days of presentence incarceration. Appellant filed a timely notice of appeal.

#### **ANALYSIS**

¶8 Appellant filed a supplemental brief raising certain issues, which we address in turn.

##### **A. Ineffective Assistance of Counsel**

¶9 Appellant argues that his trial counsel did not subpoena any of the witnesses listed by Appellant, and that due to counsel's decision, Appellant was not effectively represented during trial. Regardless of merit, ineffective assistance of counsel claims cannot be raised on direct appeal; such claims may only be raised in a Rule 32 proceeding. See *State v. Spreitz*, 202 Ariz. 1, 3, ¶ 9, 39 P.3d 525, 527 (2002). Therefore, we decline to address Appellant's ineffective assistance of counsel argument.

##### **B. Contradictory Facts and the Victim's Alleged Perjury**

¶10 Appellant next argues that he presented facts contradicting the State's evidence and supporting his claim of self-defense, and the victim's testimony at trial contradicted not only Appellant's version of the facts, but also the victim's

previous statements about the incident. Any contradictions in testimony went to the weight to be afforded that testimony, and not its admissibility, because ultimately, the jury is the trier of fact and is responsible for assessing the credibility of witnesses and weighing the evidence presented. Barring fundamental error, which we do not find here, we defer to the jury's credibility determinations because of its presence in the courtroom and proximity to the witnesses. See *State v. Uriarte*, 194 Ariz. 275, 283, ¶¶ 41-44, 981 P.2d 575, 583 (App. 1998).

### **C. Remaining Analysis**

¶11 We have reviewed the entire record for reversible error and find none. See *Leon*, 104 Ariz. at 300, 451 P.2d at 881; *Clark*, 196 Ariz. at 537, ¶ 30, 2 P.3d at 96. The evidence presented at trial was substantial and supports the verdict, and the sentence was within the statutory limits. Appellant was represented by counsel at all stages of the proceedings and was given the opportunity to speak at sentencing. The proceedings were conducted in compliance with his constitutional and statutory rights and the Arizona Rules of Criminal Procedure.

¶12 After filing of this decision, defense counsel's obligations pertaining to Appellant's representation in this appeal have ended. Counsel need do no more than inform Appellant of the status of the appeal and of his future options, unless counsel's review reveals an issue appropriate for

petition for review to the Arizona Supreme Court. See *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984). Appellant 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.

**CONCLUSION**

¶13 Appellant's conviction and sentence is affirmed.

\_\_\_\_\_/S/\_\_\_\_\_  
LAWRENCE F. WINTHROP, Judge

CONCURRING:

\_\_\_\_\_/S/\_\_\_\_\_  
PATRICIA A. OROZCO, Presiding Judge

\_\_\_\_\_/S/\_\_\_\_\_  
DANIEL A. BARKER, Judge