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See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



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

STATE OF ARIZONA,) No. 1 CA-CR 09-0785
)
Appellee,) DEPARTMENT B
)
v.) **MEMORANDUM DECISION**
) (Not for Publication-
ZAVEN H GHAZARIAN,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
)
)
)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. CR2009-006071-001 DT

The Honorable Lisa Daniel Flores, Judge

AFFIRMED

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 Paul J. Prato, Deputy Public Defender
Attorneys for Appellant

Zaven H. Ghazarian Phoenix
Appellant *in propria persona*

S W A N N, Judge

¶1 Zaven H. Ghazarian ("Defendant") appeals his convictions of two counts of aggravated assault in violation of A.R.S. § 13-1204(A)(8)(a) and one count of aggravated assault in violation of A.R.S. § 13-1204(A)(4). His appeal was filed in accordance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969).

¶2 Counsel for Defendant has searched the record and can find no arguable question of law that is not frivolous, and requests that we search the record for fundamental error. Defendant filed a supplemental brief *in propria persona* and raised the following issues: (1) ineffective assistance of counsel; (2) a pretrial meeting was held outside of his presence; and (3) the trial court declined to delay placing Defendant in custody to serve the six months' jail time that was a condition of his probation. After reviewing the record, we affirm Defendant's convictions and sentences.

Factual¹ and Procedural Background

¶3 On the evening of March 15, 2008, Defendant and the victim were drinking vodka and cranberry juice in their home

¹ "We view the evidence in the light most favorable to sustaining the verdicts and resolve all inferences against appellant." *State v. Nihiser*, 191 Ariz. 199, 201, 953 P.2d 1252, 1254 (App. 1997).

when words were exchanged between them.² Defendant, who was setting up their new computer, "came at" the victim, who was standing in their kitchen. Frightened, the victim attempted to leave through the back door but Defendant knocked her to the floor and locked the door, preventing her from leaving. As he held her down, the victim kicked at the door in an attempt to alert neighbors. Defendant then dragged the victim away from the door and put his fingers up her nose and his hand over her mouth in an attempt to suffocate her. The victim unsuccessfully tried to scream and pull Defendant's hands away from her face so that she could catch her breath.³ Defendant then grabbed the victim's head and slammed it against the kitchen floor, causing a cut on her forehead. During the assault, the victim lost control of her bowels when Defendant refused to release her so that that she could go to the bathroom. As a result of the assault, the victim sustained bruises on her arm, leg, both sides of her head, and her neck, as well as two black eyes and a cut on her forehead "that would not stop bleeding."⁴

² Defendant and the victim lived together while residing in Phoenix, Arizona.

³ During the altercation, the victim went in and out of consciousness. At trial she testified that she tried to "give in and let him kill me."

⁴ Additionally, the victim was experiencing episodes of dizziness several months after the assault.

¶14 Officers Bruha and Ayala, both dressed in their police uniforms, responded to a domestic dispute call. When they encountered Defendant, he was calmly fixing the broken back door, and told them there was nothing amiss. Soon thereafter, however, the officers encountered the victim when she burst into the patio area. The victim was very bloody with matted hair; crying hysterically, she told the officers that Defendant had done this to her and that he needed to go to jail.

¶15 The officers then placed Defendant in handcuffs and attempted to take him to their patrol car. As they were escorting him to the vehicle, Defendant lunged at the victim. While Officer Bruha tried to separate Defendant from the victim, Defendant fell to the ground. When the officers pulled Defendant from the ground, he went limp and was uncooperative. Thereafter, Officer Ayala lost his balance and both he and Defendant fell to the ground. When Officer Ayala stood up over Defendant in an attempt to get control of him, Defendant began kicking his legs in a bicycle motion. He kicked Officer Ayala in his upper right leg -- just to the right of his groin area. Officer Bruha then called for backup assistance.

¶16 Officer Garmen, who was also in his police uniform, responded to Officer Bruha's call for assistance. Thereafter, Defendant was placed in Officer Garmen's patrol car, where the rear windows of his vehicle were lowered to allow for

ventilation. Officer Bruha left to take photographs of the victim, and Officers Garmen and Ayala remained with Defendant. Officer Garmen was standing next to the driver's door when he heard a sound as if someone was spitting; it came from the direction of Defendant. Shortly thereafter he felt a substance on the back of his head that was similar to spit.

¶17 On February 26, 2009, Defendant was indicted on three counts of aggravated assault. After a three-day trial, a jury found Defendant guilty of all three counts.

¶18 On October 16, 2009, a sentencing hearing was held. At sentencing, defense counsel informed the court that despite his assurances, Defendant was "fairly dissatisfied" that on the date of trial, the judge and the attorneys met in chambers without Defendant present.⁵ Addressing Defendant, the judge explained that it was her practice to meet with counsel in chambers to familiarize herself with the allegations and the issues that might arise during trial. She reiterated defense counsel's assurance that there were no substantive discussions of law or procedure.

¶19 Turning to the issue of sentencing, the trial court suspended imposition of the sentences and placed Defendant on probation for a term of three years for each of the three

⁵ Defense counsel explained to Defendant that the meeting was for scheduling purposes only, and that there were not any substantive arguments addressed at this meeting.

counts, ordering that they be served concurrently. With respect to count three, the court sentenced Defendant to a term of six months' imprisonment, flat time, as part of the terms and conditions of his probation. The court determined that "[d]eferred jail time is not appropriate in this case because of the serious injuries inflicted on the victim[,] which were caused by a domestic violence offense." The court also found that "deferred jail is also not appropriate because the Defendant failed to report as directed during his pretrial release on numerous occasions. So he has already not given this [c]ourt any confidence that he will comply with the terms of probation."

¶10 Defendant timely appeals. We have jurisdiction pursuant to Article 6, Section 9 of the Arizona Constitution and A.R.S. §§ 12-120.21(A)(1) (2003), 13-4031 (2010), and 13-4033(A)(1).

Discussion

1. Ineffective Assistance of Counsel

¶11 In his supplemental brief, Defendant provides an account of how he and the victim journeyed from the East Coast to Arizona to give them "a fresh start." He explained that while he attained many lucrative contracts as a locksmith and security advisor, the victim "stagnated at home, alone" and her time was not "used very productively." She instead sought

relief by drinking. He argues that if the "complete picture of the events that [led] up to this situation and the injuries⁶ . . . [had] been brought up," he believes "the jury would have found both [of us] were responsible."

¶12 We construe this argument as one alleging ineffective assistance of counsel. We do not consider claims of ineffective assistance of counsel on direct appeal, regardless of merit. See *State v. Spreitz*, 202 Ariz. 1, 3, ¶ 9, 39 P.3d 525, 527 (2002). Such claims must be presented to the trial court in a petition for post-conviction relief. *Id.*

2. Pretrial Chambers Meeting with Attorneys

¶13 Next, Defendant raises as an issue the fact that on the date of trial, the judge met with attorneys in her chambers to discuss administrative matters. During sentencing, the judge explained that due to a change in the way trial assignments are administered, where the judge who tries the case does not have familiarity with the facts or the allegations, she made it a practice to meet with the attorneys to discuss administrative matters and to assist her in becoming familiar with the issues and facts of the case. We find no error in the trial court's practice of meeting with counsel before trial, and conclude that the practice was within the trial court's broad discretion to maintain an orderly procedure with its docket to ensure the

⁶ During the assault, Defendant injured his hand.

efficient and fair administration of justice. See *Findlay v. Lewis*, 172 Ariz. 343, 346, 837 P.2d 145, 148 (1992) (“A trial court has broad discretion over the management of its docket.”). We will not substitute our judgment for that of the trial court “in the day-to-day management of cases.” *Id.*⁷

3. Delayed Jail Time

¶14 Defendant also challenges the trial court’s order that he begin to serve immediately a term of six months of imprisonment in the county jail as a condition of his probation.

¶15 The trial court’s power to impose probation is prescribed by statute. *State v. Carter*, 116 Ariz. 595, 597, 570 P.2d 763, 765 (1977). Pursuant to A.R.S. § 13-901(A), “[i]f a person who has been convicted of an offense is eligible for probation, the court may suspend the imposition or execution of sentence and, if so, shall without delay place the person on . . . supervised or unsupervised probation *on such terms and conditions as the law requires and the court deems appropriate . . .*” (Emphasis added.) The trial court deemed it appropriate that Defendant begin serving his six-month term of imprisonment in the county jail as a condition of his probation because (1) the victim sustained severe injuries; and (2) Defendant had failed to report as directed during his

⁷ We further note the absence of any suggestion that the court engaged in *ex parte* communications.

pretrial release. We do not discern any error, fundamental or otherwise.

4. Remaining Issues

¶16 The record reflects Defendant received a fair trial. All of the proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure. Defendant was represented at all stages of the proceedings. The court properly instructed the jury on the elements of aggravated assault. Further, the court properly instructed the jury on the State's burden of proof. The court received and considered a presentence report and imposed a legal sentence.

Conclusion

¶17 We have reviewed the record for fundamental error and find none. See *Leon*, 104 Ariz. at 300, 451 P.2d at 881. Accordingly, we affirm Defendant's convictions and sentences. Defense counsel's obligations pertaining to this appeal have come to an end. See *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984). Unless, upon review, counsel discovers an issue appropriate for petition for review to the Arizona Supreme Court, counsel must only inform Defendant of the status of this appeal and his future options. *Id.* Defendant has 30 days from the date of this decision to file a petition for review *in propria persona*. See Ariz. R. Crim. P. 31.19(a).

Upon the court's own motion, Defendant has 30 days from the date of this decision in which to file a motion for reconsideration.

/s/

PETER B. SWANN, Judge

CONCURRING:

/s/

PATRICIA K. NORRIS, Presiding Judge

/s/

DANIEL A. BARKER, Judge