

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: 11/30/10
RUTH WILLINGHAM,
ACTING CLERK
BY: DLL

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,)
) No. 1 CA-CR 09-0832
 Appellee,)
) DEPARTMENT B
 v.)
) MEMORANDUM DECISION
 ADOLPH VALDEZ PERALES, JR.)
) (Not for Publication -
 Appellant.) Rule 111, Rules of the
) Arizona Supreme Court)

Appeal from the Superior Court in Maricopa County

Cause No. CR2008-138779-001 DT

The Honorable Maria Del Mar Verdin, Judge

AFFIRMED

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

Thomas A. Gorman Sedona
Attorney for Appellant

G E M M I L L, Judge

¶1 Adolph Valdez Perales appeals from his conviction and sentence for manslaughter in the second degree, a dangerous, serious offense, with two prior serious offenses. Perales'

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. See *Smith v. Robbins*, 528 U.S. 259 (2000). Perales was afforded the opportunity to file a supplemental brief *in propria persona* but did not do so. 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).

¶3 On April 13, 2008, J.R. was murdered. His body was found on the third floor stairwell of the Budget Suites on Sixth Avenue and Indian School in Phoenix, Arizona. J.R. was killed as a result of a single penetrating gunshot wound to the head.

¶4 L.P. lived in a room on the first floor. L.P. recalled that on the night in question, the man who lived on the third floor of her building was shot. Fifteen minutes prior to the shooting, L.P. approached a Chrysler 300 in the Budget Suites parking lot, seeking to charge her phone using the cigarette lighter. One man was standing outside the car and two men were in the car. After a few moments, L.P. left the car

because she was "spooked" by the man outside of the car who kept looking up at the third floor. L.P. went to a car nearby to charge her phone in the cigarette lighter. Then, she saw the three males go upstairs to the room on the third floor. She did not hear any arguing, but a few seconds later she heard a gunshot and saw two of the three men hurry down the stairs and leave in the Chrysler 300. L.P. identified one of the males in a photo lineup, Humberto Quintero, but she did not identify Perales.

¶15 During their investigations, gang detectives learned that J.R. was associated with the Mexican Mafia, but was placed on their hit list because he sided with the wrong faction during an internal mafia dispute. Detectives also discovered that J.R.'s cell phone was missing and was still being used after his murder. The phone records showed that the victim's phone was being used to call a specific number. A few days after the murder, Perales was arrested on an unrelated matter. The number he gave to the officer during this arrest matched the number that the victim's phone had been calling after the murder.

¶16 Also, after his arrest Perales tried to make a deal with the officer. He said that he would give the officer information about the Mexican Mafia in return for getting out of the arrest. The officer did not accept this offer.

¶17 In continuing their investigation of the murder,

however, detectives wanted to interview Perales. Perales agreed to speak with the police on May 2, 2008 at the Fourth Avenue Jail. Thinking that the police were there to find out information about the Mexican Mafia, and hopefully cut him a break, Perales began telling the detectives about the mafia. Perales admitted to earning tattoos from mafia members for violent crimes that he committed in prison and he also talked about how his "offer is on the table" to join the mafia because of things he had done. The mafia is a "blood in, blood out" organization, meaning that you must kill someone to get in, and you can only get out by being killed. Perales also admitted to meeting with Beibo, a high ranking member of the mafia, to discuss J.R. being on the hit list.

¶18 Toward the end of the interview, the detectives explained the real reason for their visit. They showed Perales the phone records and photographs from the crime scene. Perales denied involvement with the murder and stated that the last time he saw the victim was early afternoon on April 13, 2008 when he dropped him off at the Budget Suites.

¶19 After the interview, Perales was recorded during a jail phone call to Humberto Quintero. The two men discussed why Perales had J.R.'s phone after the murder and Perales also warned Quintero that the detectives were going to question him.

¶10 The police conducted two more follow-up interviews

with Perales. Perales' story changed each time. Ultimately, at the end of the third interview, Perales admitted that he was with J.R. and Humberto Quintero moments before the murder. Further investigation revealed that Humberto Quintero had rented three cars between April 4, 2008 and April 16, 2008, the last car being a black Chrysler 300, which was the car L.P. witnessed fleeing the crime scene.

¶11 Perales was charged with one count of conspiracy to commit first degree murder (count one), a dangerous felony; one count of first degree murder (count two), a dangerous felony; and one count of assisting a criminal street gang (count three), a dangerous felony. The case was tried by a jury beginning on September 15, 2009. Perales testified in his defense at trial. During his testimony, Perales admitted that he had been convicted of five prior felonies. Perales stated that he lied to the police about the Mexican Mafia during his previous interviews. He admitted that he and Quintero were at the Budget Suites on Sixth Avenue and Indian School on April 13, 2008 to sell drugs to J.R., but said that he did not kill J.R.

¶12 The jury was unable to agree about Perales' guilt on count one, but found Perales guilty of the lesser included offense of count two, manslaughter, a dangerous offense, and guilty of count three, assisting a criminal street gang.

¶13 A hearing on Perales' prior convictions was held and

the court found that he had three prior serious felonies. See Ariz. Rev. Stat. ("A.R.S.") § 13-604(W)(5)(c) (2008) (defining "serious offense"). At sentencing, the trial court dismissed count one without prejudice and count three with prejudice. The court then sentenced Perales on count two, manslaughter, to life imprisonment, not eligible for suspension of sentence, probation, pardon, or release from confinement until twenty-five years have been served. See A.R.S. § 13-604(S), (W)(5)(c) (2008).¹ Additionally, Perales received presentence

¹ In 2008 when this offense was committed, A.R.S. § 13-604(S), (W)(5)(c) provided:

S. A person who is at least eighteen years of age or who has been tried as an adult and who stands convicted of a serious offense except a drug offense, first degree murder or any dangerous crime against children, whether a completed or preparatory offense, and who has previously been convicted of two or more serious offenses not committed on the same occasion shall be sentenced to life imprisonment and is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by § 31-233, subsection A or B until the person has served not less than twenty-five years or the sentence is commuted.

W. For the purposes of this section:

5. "Serious offense" means any of the following offenses if committed in this state or any offense committed outside this state which if committed in this state would constitute one of the following offenses:

incarceration credit for 563 days.

DISCUSSION

¶14 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, Perales 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.

¶15 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 Perales 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. Perales 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.

(c) Manslaughter.

CONCLUSION

¶16 The conviction and sentence are affirmed.

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

CONCURRING:

_____/s/_____
PATRICIA K. NORRIS, Judge

_____/s/_____
MAURICE PORTLEY, Judge