

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



DIVISION ONE  
FILED: 09/28/2010  
RUTH WILLINGHAM,  
ACTING CLERK  
BY: GH

STATE OF ARIZONA, ) No. 1 CA-CR 09-0846  
 )  
 Appellee, ) DEPARTMENT B  
 )  
 v. ) MEMORANDUM DECISION  
 )  
 BRANDON TROY GISHIE, ) (Not for Publication -  
 ) Rule 111, Rules of the  
 Appellant. ) Arizona Supreme Court)  
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Appeal from the Superior Court in Maricopa County

Cause No. CR2007-163564-001 SE

The Honorable Emmet J. Ronan, 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

Maricopa County Public Defender's Office Phoenix

By Spencer D. Heffel, Deputy Public Defender  
Attorneys for Appellant

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G E M M I L L, Judge

#1 Brandon Troy Gishie appeals his convictions and  
sentences for two counts of aggravated assault, class three

dangerous felonies. Gishie's 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). Gishie was afforded the opportunity to file a supplemental brief *in propria persona* but did not do so. For the following reasons, we affirm Gishie's convictions and sentences.

#### **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). On September 28, 2007, J.C. was working as a bouncer at Zuma's Bar and Grill on Mill Avenue in Tempe. J.C. asked Gishie to leave the bar because he was too intoxicated and causing problems near the women's restroom. Gishie did not comply with J.C.'s request, so J.C. grabbed Gishie and escorted him down the back hallway of the bar. Gishie continued to resist J.C.'s attempts to remove him from the bar by fighting J.C. and gripping the doorway. Three other Zuma employees, T.G., R.S., and M.T., saw the struggle and came to J.C.'s assistance. The four men escorted Gishie out of the bar's back door into an alley, and shut the door behind them.

¶3        After the door was closed J.C. heard crashing noises in the alley. He opened the door to find Gishie throwing bar stools around. The four bouncers went into the alley and told Gishie to stop throwing the bar stools and to leave. Gishie became angry, reached in his pocket, and charged the bouncers with a silver knife in his hand. Afraid that Gishie was going to harm them with the knife, the bouncers ran inside, shut the door, and called police.

¶4        A few minutes later Gishie was arrested by Tempe police. As the officers were putting Gishie on the ground they saw the knife drop from his person.

¶5        Gishie was indicted on four counts of aggravated assault, class 3 dangerous felonies. Gishie pled not guilty and the case proceeded to trial. At the conclusion of the State's case, the judge dismissed counts three and four of the indictment pursuant to Arizona Rule of Criminal Procedure 20. The jury convicted Gishie on counts one and two, aggravated assault, dangerous offenses.

¶6        During sentencing, the Court found as an aggravating factor that Gishie had a prior felony conviction for a similar offense. However, the Court found various mitigating factors, including Gishie's age and family support, which outweighed the aggravating factor. Gishie was given credit for 78 days of presentence incarceration and sentenced to a minimum term of

five years for each count, with both sentences to be served concurrently.

#### DISCUSSION

¶7 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 sentences imposed fall within the range permitted by law, and the evidence presented supports the convictions. As far as the record reveals, Gishie 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.

¶8 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 Gishie 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. Gishie 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.

**CONCLUSION**

¶9

The convictions and sentences are affirmed.

\_\_\_\_\_/s/\_\_\_\_\_  
JOHN C. GEMMILL, Presiding Judge

CONCURRING:

\_\_\_\_\_/s/\_\_\_\_\_  
PATRICIA K. NORRIS, Judge

\_\_\_\_\_/s/\_\_\_\_\_  
MAURICE PORTLEY, Judge