

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



DIVISION ONE
FILED: 09/21/2010
RUTH WILLINGHAM,
ACTING CLERK
BY: GH

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

STATE OF ARIZONA,) 1 CA-CR 09-0863
)
Appellee,) DEPARTMENT E
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
ALONZO HERNANDEZ,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2009-005946-001 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

Maricopa County Public Defender Phoenix
By Joel M. Glynn, Deputy Public Defender
Attorneys for Appellant

I R V I N E, Judge

¶1 This appeal is filed in accordance with *Anders v. California*, 386 U.S. 738 (1967) and *State v. Leon*, 104 Ariz.

297, 451 P.2d 878 (1969). Counsel for Alonzo Hernandez ("Hernandez") asks this Court to search the record for fundamental error. Hernandez was given an opportunity to file a supplemental brief in propria persona, but he has not done so. After reviewing the record, we affirm Hernandez's convictions and sentences.

FACTS AND PROCEDURAL HISTORY

¶2 We view the facts in the light most favorable to sustaining the trial court's judgment and resolve all reasonable inferences against Hernandez. *State v. Fontes*, 195 Ariz. 229, 230, ¶ 2, 986 P.2d 897, 898 (App. 1998). On September 14, 2008, Hernandez, a prohibited possessor, was alleged to have fired a gun in a public park during a child's birthday celebration. On September 26, 2008, in retaliation for reporting the September 14 event, Hernandez allegedly broke into the home of his ex-girlfriend C.V. While in the home, Hernandez physically assaulted C.V. and threatened her with a gun. Hernandez was found at his brother's apartment and taken into custody.

¶3 The State charged Hernandez with unlawful discharge of a firearm, a class six dangerous felony (count 1); misconduct involving weapons, a class four felony (count 2); disorderly conduct, a class six dangerous felony and a domestic violence offense (count 3); aggravated assault, a class three dangerous felony and a domestic violence offense (count 4); assault, a

class one misdemeanor and a domestic violence offense (count 5); burglary in the first degree, a class two dangerous felony (count 6); and misconduct involving weapons, a class four felony (count 7). At the close of the evidence, the trial court properly instructed the jury on the elements of the offenses. Hernandez was convicted as charged.

¶4 The trial court conducted the sentencing hearing in compliance with Hernandez's constitutional rights and Rule 26 of the Arizona Rules of Criminal Procedure. The trial court sentenced Hernandez to 2.25 years for count 1, 4.5 years for count 2, 2.25 years for count 3, 7.5 years for count 4, 6 months for count 5, 10.5 years for count 6 and 4.5 years for count 7. Counts 1, 2 and 3 were to run concurrently to one another, but consecutively to counts 4, 6 and 7. Counts 4, 6 and 7 were to run concurrently to one another, but consecutive to counts 1, 2 and 3. The trial court gave Hernandez 413 days of presentence-incarceration credit for counts 1, 2, 3 and 5.¹

DISCUSSION

¶5 We review Hernandez's convictions and sentences for fundamental error. *See State v. Gendron*, 168 Ariz. 153, 155, 812 P.2d 626, 628 (1991).

¹ Because Hernandez received 413 days of presentence-incarceration credit for count 5, his sentence was complete at the time of sentencing.

¶6 Counsel for Hernandez has advised this Court that after a diligent search of the entire record, he has found no arguable question of law. We have read and considered counsel's brief and fully reviewed the record for reversible error. See *Leon*, 104 Ariz. at 300, 451 P.2d at 881. We find none. All of the proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure. So far as the record reveals, Hernandez was represented by counsel at all stages of the proceedings. The court held the appropriate pretrial hearings. The State presented evidence sufficient to allow the jury to convict Hernandez as charged. The jury was properly comprised of twelve jurors and two alternates. The court properly instructed the jury on the elements of the offense, the State's burden of proof beyond a reasonable doubt and the necessity of a unanimous verdict. The jury returned a unanimous verdict, which was confirmed by jury polling. The court received and considered a presentence report and addressed its contents during the sentencing hearing. At sentencing, Hernandez and his counsel were given an opportunity to speak and the court imposed a legal sentence. We decline to order briefing and we affirm Hernandez's convictions and sentences.

¶7 Upon the filing of this decision, defense counsel shall inform Hernandez of the status of his appeal and of his future options. Defense counsel has no further obligations

unless, upon review, counsel finds an issue appropriate for submission to the Arizona Supreme Court by petition for review. See *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984). Hernandez shall have thirty days from the date of this decision to proceed, if he desires, with a pro per motion for reconsideration or petition for review. On the court's own motion, we extend the time for Hernandez to file a pro per motion for reconsideration to thirty days from the date of this decision.

CONCLUSION

¶8 We affirm Hernandez's convictions and sentences.

/s/

PATRICK IRVINE, Judge

CONCURRING:

/s/

DIANE M. JOHNSEN, Presiding Judge

/s/

PHILIP HALL, Judge