

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: 09/30/2010
RUTH WILLINGHAM,
ACTING CLERK
BY: GH

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) No. 1 CA-CR 09-0877
)
Appellee,) DEPARTMENT E
)
v.) **MEMORANDUM DECISION**
)
ORLANDO RODRIGUEZ,) (Not for Publication -
) Rule 111, Rules of the
Appellant.) Arizona Supreme Court)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2008-142963-001 DT

The Honorable Barbara L. Spencer, Judge *Pro Tempore*

CONVICTIONS AND SENTENCES AFFIRMED

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

Bruce F. Peterson, Legal Advocate Phoenix
By Consuelo M. Ohanesian, Deputy Legal Advocate
Attorneys for Appellant

J O H N S E N, Judge

¶1 This appeal was timely filed in accordance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), following Orlando Rodriguez's

convictions of two counts of robbery, Class 4 felonies. Rodriguez's counsel has searched the record on appeal and found no arguable question of law that is not frivolous. See *Smith v. Robbins*, 528 U.S. 259 (2000); *Anders*, 386 U.S. 738; *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999). Rodriguez was given the opportunity to file a supplemental brief but did not do so. Counsel now asks this court to search the record for fundamental error. After reviewing the entire record, we affirm Rodriguez's convictions and sentences.

FACTS AND PROCEDURAL HISTORY

¶2 Rodriguez and two companions approached Scott E. and Juan T. while they were walking down the street one night.¹ Rodriguez advanced toward Scott E. and Juan T. with his fists raised, demanding that the two give him "all [they had]." Juan T. gave Rodriguez five dollars. One of Rodriguez's companions demanded Scott E.'s necklace; Scott E. refused and the assailant forcefully grabbed the necklace. Scott E. resisted and the assailant punched him, knocking Scott E. to the ground and tearing the chain off his neck. Juan T. came to Scott E.'s aid and began fighting with Scott E.'s assailant. Rodriguez then ran at Juan T., thrusting a shiny object toward him.

¹ Upon review, we view the facts in the light most favorable to sustaining the jury's verdict and resolve all inferences against Rodriguez. *State v. Fontes*, 195 Ariz. 229, 230, ¶ 2, 986 P.2d 897, 898 (App. 1998).

¶13 After a jury convicted Rodriguez, the court suspended sentences on both convictions and imposed concurrent three-year terms of probation, which included a deferred four-month jail term. Rodriguez timely appealed. We have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution, and Arizona Revised Statutes sections 12-120.21(A)(1) (2003), 13-4031 (2010) and -4033(A)(1) (2010).²

DISCUSSION

¶14 The record reflects Rodriguez received a fair trial. He was represented by counsel at all stages of the proceedings against him and was present at all critical stages. The court held appropriate pretrial hearings.

¶15 The State presented both direct and circumstantial evidence sufficient to allow the jury to convict. The jury was properly comprised of eight members with one alternate. The court properly instructed the jury on the elements of the charges, the State's burden of proof and the necessity of a unanimous verdict. The jury returned a unanimous verdict, which was confirmed by juror polling. The court received and considered a presentence report and addressed its contents during the sentencing hearing and imposed legal terms of probation.

² Absent material revisions after the date of an alleged offense, we cite a statute's current version.

CONCLUSION

¶16 We have reviewed the entire record for reversible error and find none. See *Leon*, 104 Ariz. at 300, 451 P.2d at 881.

¶17 After the filing of this decision, defense counsel's obligations in this appeal have ended. Defense counsel need only inform Rodriguez of the outcome of this appeal and his future options, 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). On the court's own motion, Rodriguez has 30 days from the date of this decision to proceed, if he wishes, with a *pro per* motion for reconsideration. Rodriguez has 30 days from the date of this decision to proceed, if he wishes, with a *pro per* petition for review.

/s/

DIANE M. JOHNSEN, Presiding Judge

CONCURRING:

/s/

PATRICK IRVINE, Judge

/s/

PHILIP HALL, Judge