

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: 09/23/2010
RUTH WILLINGHAM,
ACTING CLERK
BY: GH

STATE OF ARIZONA,) 1 CA-CR 10-0029
)
Appellee,) DEPARTMENT D
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
DAVID LEE WILSON,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2009-116270-001SE

The Honorable John R. Hannah, 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 Terry J. Adams, Deputy Public Defender
Attorneys for Appellant

W I N T H R O P, Presiding Judge

¶1 David Lee Wilson ("Appellant") appeals from his conviction and sentence for aggravated assault. Appellant's counsel has filed a brief in accordance with *Smith v. Robbins*,

528 U.S. 259 (2000); *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 on appeal and found no arguable question of law that is not frivolous. Appellant's counsel therefore requests that we review the record for fundamental error. See *State v. Clark*, 196 Ariz. 530, 537, ¶ 30, 2 P.3d 89, 96 (App. 1999) (stating that this court reviews the entire record for reversible error). Although this court granted Appellant the opportunity to file a supplemental brief *in propria persona*, he has not done so.

¶2 We have appellate jurisdiction pursuant to the Arizona Constitution, Article 6, Section 9, and Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1) (2003), 13-4031 (2010), and 13-4033(A) (2010). Finding no reversible error, we affirm Appellant's conviction and sentence.

I. FACTS AND PROCEDURAL HISTORY

¶3 We review the facts in the light most favorable to sustaining the verdict and resolve all reasonable inferences against Appellant. See *State v. Kiper*, 181 Ariz. 62, 64, 887 P.2d 592, 594 (App. 1994).

¶4 On April 30, 2009, the State charged Appellant by information with one count of aggravated assault, a class three

felony. See A.R.S. §§ 13-1203 (2010), -1204 (2010).¹ The State later alleged that Appellant had six non-dangerous historical prior felony convictions and that the charged offense was a dangerous offense because it involved the use of a deadly weapon or dangerous instrument. See A.R.S. § 13-704 (2010). Additionally, the State filed an allegation of aggravating circumstances other than prior convictions.

¶15 At trial, the State presented the following evidence: On December 22, 2008, at approximately 9:00 a.m., the victim was at the home of his girlfriend, Erica, when the two of them engaged in an "argument." After the argument, Erica called Appellant while the victim gathered some belongings, left, and began walking home. As the victim crossed through the parking lot of an electronics store, a vehicle pulled up next to him. Appellant, who was the driver of the vehicle, began shouting at the victim, and the two men began to argue. The victim threatened to "kick [Appellant's] ass" if Appellant exited the vehicle, and he told Appellant that he knew where Appellant lived. Appellant nonetheless exited his vehicle and approached the victim. After a brief physical altercation, the victim went to the front of the store to seek help from the store's security personnel, while Appellant re-entered his vehicle, sped through

¹ We cite the current version of the applicable statutes because no revisions material to this decision have occurred.

the parking lot to the front of the store, exited his vehicle, and yelled at the victim, "[W]hat the f--- did you say to me?" After a security guard asked Appellant to leave, Appellant re-entered his vehicle and drove away.

¶16 The victim waited a few minutes and eventually began to walk home. As he did so, however, he observed Appellant's vehicle parked behind the store. The victim continued walking and heard the vehicle accelerate toward him. The victim attempted to jump out of the way; however, the front of the vehicle struck him in the lower back, causing him to fall on the pavement and suffer various "road rash" injuries, including a three-inch gash to the back of his head. The victim eventually stood up, limped home, and explained what had happened to his father, who called the police. Paramedics later arrived and treated the victim.

¶17 The police contacted Appellant by telephone. Appellant admitted striking the victim, but stated that he did so because he did not want the victim to follow through with threats made by the victim earlier that day. Appellant also stated that he only intended to hurt the victim, not to kill him. Additionally, Appellant acknowledged there might have been a better way to handle the situation.

¶18 Appellant testified at trial that he knew both the victim and Erica. On the morning of the incident, Erica called

Appellant, and she asked him to pick her up at a nearby mall. As he drove to the mall, Appellant observed the victim, who appeared to be carrying Erica's backpack. Appellant pulled up next to the victim, asked for the backpack, and exited his vehicle to retrieve the backpack. When he reached for the backpack, however, the victim pushed him, and a physical altercation ensued. After the altercation, the victim threatened to kill Appellant and began to leave. Appellant re-entered his vehicle, followed the victim to the front of the store, exited the vehicle, and warned the victim not to threaten him. A security guard told Appellant to leave, and Appellant re-entered his vehicle and began to drive away. Appellant only drove to the back of the parking lot behind the store, however, where he tried to call his son. Shortly thereafter, the victim came around the corner with a metal pipe in his hand and approached Appellant's vehicle. Appellant removed his foot from the vehicle's brake, and the vehicle moved forward, striking the victim. The pipe rolled away, and Appellant picked it up. When Appellant left, the victim was sitting up in the parking lot. Appellant also admitted having one prior felony conviction.

¶19 The jury found Appellant guilty as charged, and further determined that the crime was a dangerous offense. The jury subsequently determined that the State had proven one aggravating factor, specifically that the offense had caused

physical, emotional, or financial harm to the victim. The trial court sentenced Appellant to a slightly aggravated term of 11.25 years' imprisonment in the Arizona Department of Corrections and credited Appellant for sixty-three days of pre-sentence incarceration. Appellant filed a timely notice of appeal.

II. ANALYSIS

¶10 We have reviewed the entire record for reversible error and find none. See *Leon*, 104 Ariz. at 300, 451 P.2d at 881; *Clark*, 196 Ariz. at 537, ¶ 30, 2 P.3d at 96. The evidence presented at trial was substantial and supports the verdict, and the sentence was within the statutory limits. Appellant was represented by counsel at all stages of the proceedings and was given the opportunity to speak at sentencing. The proceedings were conducted in compliance with his constitutional and statutory rights and the Arizona Rules of Criminal Procedure.

¶11 After filing of this decision, defense counsel's obligations pertaining to Appellant's representation in this appeal have ended. Counsel need do no more than inform Appellant of the status of the appeal and of his future options, unless counsel's review reveals an issue appropriate for petition for review to the Arizona Supreme Court. See *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984). Appellant has thirty days from the date of this decision to

proceed, if he desires, with a *pro per* motion for reconsideration or petition for review.

III. CONCLUSION

¶12 Appellant's conviction and sentence are affirmed.

_____/S/_____
LAWRENCE F. WINTHROP, Presiding Judge

CONCURRING:

_____/S/_____
PATRICIA K. NORRIS, Judge

_____/S/_____
PATRICK IRVINE, Judge