

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: 01/26/2010
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IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

IN RE: CHRISTOPHER P.) No. 1 CA-JV 09-0164
)
) DEPARTMENT A
)
) **MEMORANDUM DECISION**
)
) (Not for Publication -
) Ariz. R. P. Juv. Ct. 103(G);
) ARCAP 28)
)

Appeal from the Superior Court in Maricopa County

Cause No. JV175536

The Honorable Dawn M. Bergin, Judge

AFFIRMED

Andrew P. Thomas, Maricopa County Attorney Phoenix
By Jeff W. Trudgian, Appeals Bureau Chief/
Deputy County Attorney
Attorneys for Appellee

James H. Haas, Maricopa County Public Defender Phoenix
By Eleanor S. Terpstra, Deputy Public Defender
Attorneys for Appellant

J O H N S E N, Judge

¶1 Christopher P. appeals his adjudication of delinquency on two counts of attempted sexual conduct with a minor under 15, both Class 3 felonies, and subsequent disposition. 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). Christopher'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); *In re JV-117258*, 163 Ariz. 484, 485-88, 788 P.2d 1235, 1236-39 (App. 1989). Counsel now asks this court to search the record for fundamental error. After reviewing the entire record, we affirm the juvenile court's orders.

FACTS AND PROCEDURAL HISTORY

¶2 Christopher P. lived with his stepfather and stepmother and six other children.¹ Christopher is the oldest of the children; the next oldest child, whom we will refer to as Victim, is his stepmother's oldest biological child. She is four years younger than Christopher. The family lived in a five-bedroom house, and Christopher and Victim each had their own rooms. Christopher's room was downstairs, and the rest of the family slept upstairs.

¶3 In October 2008, Victim disclosed that Christopher was doing things to her that she didn't like. She first talked to

¹ On appeal from an adjudication of delinquency, we view the evidence in the light most favorable to upholding the court's judgment and resolve all reasonable inferences against the juvenile. *In re Jessi W.*, 214 Ariz. 334, 336, ¶ 11, 152 P.3d 1217, 1219 (App. 2007).

her friends, then her teacher. The teacher called the police and Child Protective Services, which took Victim to ChildHelp, where she was interviewed by Detective John Bell. Victim stated that in the middle of the night, while she was sleeping, Christopher came into her room and asked her "to suck his dick." She stated that it happened more than once, and it happened in his room as well. Christopher was clothed when he said this, but once she could see "half of his boxers."

¶14 Victim was afraid of Christopher when this happened because he would grab her arm and pull her next to him. The one time that it happened in Christopher's room, Victim stated that Christopher got mad and hit "his . . . bed" when she said no. Victim's younger sister, S., testified that one time when she was sleeping in Victim's bed, Christopher came in while Victim was sleeping, lay on top of her, and wiggled. Victim did not testify about this incident.

¶15 During his interview with Detective Dan Dougherty, Christopher repeatedly said that when he used the phrase with Victim, he did not mean it. After being interviewed for about 90 minutes, he said that the last time he told Victim, "suck my dick," he meant it. The police interview was played at the adjudication hearing. During the hearing, Christopher testified that he never actually wanted Victim to do what he was asking,

but that he wanted to discover if Victim was having sex with people at school, so he was testing her. There was also substantial testimony that Victim often failed to tell the truth.

¶16 The court adjudicated Christopher delinquent on both counts of attempted sexual conduct with a minor. Christopher was placed on standard probation with sex offender addendum conditions and required to participate in the YDI Chaperone Program. He also was given 60 days' deferred detention.

¶17 Christopher 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) and 8-235(A) (2007).

DISCUSSION

¶18 Substantial evidence supported the juvenile court's adjudication. The proceedings were conducted in compliance with the Arizona Rules of Procedure for the Juvenile Court. Although the court did not hold a voluntariness hearing regarding Christopher's statements to the police, Christopher did not object to Dougherty's testimony and the circumstances do not suggest that his statements might have been involuntary. At the outset of the interview, Christopher was given the juvenile

version of his *Miranda*² rights and consented to being interviewed without a lawyer or a parent present. Christopher was present and adequately represented by counsel at all stages of the proceedings, and the disposition was within the court's discretion.

CONCLUSION

¶19 We have read and considered counsel's brief and searched the entire record for fundamental error. See *JV-117258*, 163 Ariz. at 488, 788 P.2d at 1239. We find none.

¶10 After the filing of this decision, defense counsel's obligations pertaining to Christopher's representation in this appeal have ended. Defense counsel need do no more than inform Christopher 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); Ariz. R. P. Juv. Ct. 107(A).

/s/
DIANE M. JOHNSEN, Presiding Judge

CONCURRING:

/s/
MAURICE PORTLEY, Judge

/s/
DANIEL A. BARKER, Judge

² See *Miranda v. Arizona*, 384 U.S. 436 (1966).