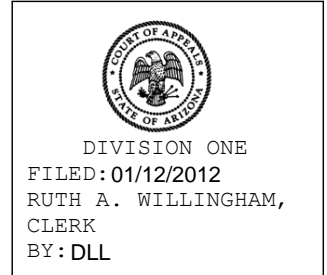


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED  
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE



STATE OF ARIZONA, ) 1 CA-CR 10-0531  
)  
Appellee, ) DEPARTMENT D  
)  
v. ) **MEMORANDUM DECISION**  
) (Not for Publication -  
JOHN FARINAS, ) Rule 111, Rules of the  
) Arizona Supreme Court)  
Appellant. )  
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2008-161461-005DT

The Honorable Sam J. Myers, Judge

**AFFIRMED**

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

Eaton Law Office Phoenix  
By Pamela J. Eaton  
Attorneys for Appellant

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G E M M I L L, Judge

¶1 John Farinas appeals from his convictions and sentences for assisting a criminal syndicate and promoting

prison contraband. Farinas' 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 she has searched the record and found no arguable question of law and requesting that this court examine the record for reversible error. Farinas was afforded an opportunity to file a supplemental brief *in propria persona* but did not do so. See *State v. Clark*, 196 Ariz. 530, 537, ¶ 30, 2 P.3d 89, 96 (App. 1999). For the following reasons, we affirm.

#### **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).

¶3 In October 2008, Farinas was indicted on one count of assisting a criminal syndicate, a class 4 felony, and one count of conspiracy to promote prison contraband, a class 2 felony. In February 2010 Farinas was indicted on one count of promoting prison contraband, a class 5 felony. The three counts were consolidated in April 2010.

¶4 An eight-day jury trial commenced in April 2010. The State alleged that on or between January 1, 2008 and June 30, 2008, Farinas, considered to be a member of the Mexican Mafia by the Department of Corrections, conspired to smuggle contraband

into a secure facility for the benefit of the Mexican Mafia. The State also alleged that in early August 2008 Farinas knowingly made, obtained, or possessed contraband, a handcuff key, while confined in the Maricopa County Jail. The following evidence was presented at Farinas' trial.

¶15 From early to mid 2008, Farinas was incarcerated at the Fourth Avenue Jail ("Jail") in the Special Management Unit ("SMU"). Each inmate in the SMU was isolated to his own cell, had access to only one day room, and only one person was allowed access to the recreation room at a time. Farinas was housed in level four at the SMU in cell number 66.

¶16 Farinas was known as a lieutenant in the Mexican Mafia and was nicknamed "Sinner". Detective D., a police officer with the City of Phoenix formerly assigned to a task force to investigate prison gangs, specifically the Mexican Mafia, identified Farinas in court and testified that the tattoos on Farinas' chest were of the Mexican Mafia patch and of "Carnalismo," which are both known to be associated with membership in the Mexican Mafia.

¶17 Joseph Garcia, also known as Casper, and Juanilo Montiel were housed in cells 64 and 65, the cells next to Farinas, and had access to the same recreation room. Both were also known members of the Mexican Mafia. Detective D. testified that in August 2008, the cells of Farinas, Garcia, Montiel, and

Jesse Alejandro were searched at the Jail. He confirmed that letters about Mexican Mafia business, items belonging to Farinas, and letters to Farinas were found in Garcia's cell. The items found in Garcia's cell confirmed to Detective D. that there was a direct connection between Farinas and Garcia in relation to both the Mexican Mafia and in being able to get items from Farinas' cell into Garcia's cell, which according to Detective D. was proof a criminal syndicate was being run within the confines of the Jail.

¶18 A video of Montiel and Garcia was presented at trial showing the two inmates passing objects to each other between their cells. Detective D. testified that the video of Montiel and Garcia passing objects to each other between their cells was further evidence of the conspiracy involving Farinas because it proved the ability of inmates to pass letters and objects from cell to cell, which allowed them to communicate and deliver messages regarding Mexican Mafia business.

¶19 In the search of Farinas' cell in August 2008, a plastic homemade handcuff key, the address of a known Tucson mafia member, gang related letters, and a folder containing paper documents and photographs related to the New Mexican Mafia were found. The homemade handcuff key constituted contraband, which is defined as "[a]nything that would threaten the safety or security of the facility" including drugs, weapons, CDs, and

handcuff keys.

¶10 Sergeant W. of the Maricopa County Sheriff's office at the Fourth Avenue Jail testified as to the visitor jail procedures and to certain inmates' visitation logs, including Farinas'. Sergeant W. testified that with proper identification lawyers could visit any inmate housed in the Jail without actually representing the inmate. He further testified that legal visitors at the Jail were allowed privileged visits which permitted them to meet with the inmates in their personal day room separated by the cell door rather than through the video visitation system for regular visits. Objects and papers could be passed back and forth between lawyers and inmates through the open slots in the cell door. Legal visits were monitored by camera with video but not audio.

¶11 Former Attorney Jason Keller and his assistants visited Farinas and others in the same unit at the Jail. Sergeant W. testified that between January 2008 and September 2008 Keller signed in to visit Farinas five times, but that unescorted lawyers on in-person privileged visits were able to visit other inmates without the visit being logged. Furthermore, Sergeant W. testified that an attorney can sign in to visit a particular inmate without actually making it to that person's cell.

¶12 Keller provided contraband to Farinas and other

inmates during his visits to the Fourth Avenue Jail; the contraband included a cell phone. A video of a visitation between Keller and Farinas was presented in court which Detective D. testified showed Keller giving an object to Farinas.

¶13 The jury found Farinas guilty of all three charges of assisting a criminal syndicate, conspiracy to commit promoting prison contraband, and promoting prison contraband. As to the charge of conspiracy to commit promoting prison contraband ("count 2"), the jury was not unanimous as to which type of contraband Farinas conspired to promote, but did unanimously find that the crime was committed for the benefit of, at the direction of, or in association with a criminal street gang with the intent to promote, further, or assist any criminal conduct by the criminal street gang. The defense requested a mistrial on count 2. After allowing the State to brief the issue, a mistrial was ordered as to count 2, conspiracy to commit promoting prison contraband, in June 2010, and the State subsequently dismissed the count without prejudice.

¶14 The court sentenced Farinas to an aggravated sentence of 12 years imprisonment, with 604 days of presentence incarceration credit, for count 1, assisting a criminal syndicate. The court sentenced Farinas to an aggravated sentence of 6 years imprisonment from the date of completion of

the sentence in count 1 for his conviction on count 3, promoting prison contraband. Pursuant to Arizona Revised Statutes ("A.R.S.") 13-701(D)(11) (Supp. 2011)<sup>1</sup> the sentences were aggravated because Farinas had previously been convicted of a felony within the ten years immediately preceding the date of these offenses.

¶15 Farinas timely appealed. We have jurisdiction pursuant to Arizona Constitution Article 6, Section 9, and A.R.S. Sections 12-120.21(A)(1) (2003), 13-4031 (2010), and 13-4033(A)(1) (2010).

#### DISCUSSION

¶16 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 ranges permitted by law, and the evidence presented supports the convictions. As far as the record reveals, Farinas 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.

¶17 Pursuant to *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984), counsel's obligations in this

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<sup>1</sup> We cite to the current versions of statutes when no revisions material to this decision have occurred since the date of the alleged offense(s).

appeal have ended. Counsel need do no more than inform Farinas 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. Farinas 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**

¶18 The convictions and sentences are affirmed.

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

CONCURRING:

\_\_\_\_\_/s/\_\_\_\_\_  
LAWRENCE F. WINTHROP, Chief Judge

\_\_\_\_\_/s/\_\_\_\_\_  
PHILIP HALL, Judge