

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: 01/31/2012  
RUTH A. WILLINGHAM,  
CLERK  
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IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

STATE OF ARIZONA, ) No. 1 CA-CR 10-0944  
 )  
Appellee, ) DEPARTMENT E  
 )  
v. ) **MEMORANDUM DECISION**  
 )  
PHILLIP R. MONTOYA, ) (Not for Publication -  
 ) Rule 111, Rules of the  
Appellant. ) Arizona Supreme Court)  
 )

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Appeal from the Superior Court in Maricopa County

Cause No. CR2008-120932-001 DT

The Honorable Joseph C. Welty, 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

Janelle A. McEachern, Attorney at Law Chandler  
Attorney for Appellant

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**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 Phillip R. Montoya's convictions of first-degree murder, a Class 1 felony, and attempted first-degree murder, a Class 2 felony. Montoya'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). Montoya 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 Montoya's convictions and sentences.

#### FACTS AND PROCEDURAL HISTORY

¶2 A 16-year-old girl was at the wheel of an SUV in Chandler one night.<sup>1</sup> She had two passengers; one sat in the front beside her, the other was in the back seat. The passenger in the back seat suddenly shot the other passenger five times, killing him. He then turned his gun on the driver and shot her in the face, but she survived. Although the driver did not identify the shooter, one of the other victim's sisters

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

testified she saw the victim drive away in an SUV that night with Montoya. Another sister testified her brother introduced her to Montoya that night and said he was leaving with him. Montoya was arrested early the following morning. He chose to speak to police, and was interviewed for roughly two hours. In a videotape of that interview played for the jury, Montoya lied several times about his whereabouts and activities the night before.

¶13 At trial, Montoya's defense was that the shootings were committed by another man, and the court allowed evidence of the third party's reputation for violence, association with the victims and that some months after this crime, he had shot at a car driven by Montoya's brother. In response, the State offered alibi evidence tending to show that the third party did not commit the shootings at issue here. The jury convicted Montoya on both charges and found both were dangerous offenses. The court sentenced Montoya to concurrent terms of incarceration of natural life on the murder conviction and 21 years on the attempted murder conviction.

¶14 Montoya timely appealed. We have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution, and

Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1), 13-4031 and -4033 (2012).<sup>2</sup>

#### DISCUSSION

¶15 The record reflects Montoya 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 did not erroneously deny any request for a pretrial hearing. The superior court did not conduct a voluntariness hearing; however, neither Montoya nor the evidence raised a question of voluntariness about the defendant's statements. See *State v. Smith*, 114 Ariz. 415, 419, 561 P.2d 739, 743 (1977); *State v. Finn*, 111 Ariz. 271, 275, 528 P.2d 615, 619 (1974).

¶16 The State presented both direct and circumstantial evidence sufficient to allow the jury to convict. The jury was properly composed of 12 members. The court properly instructed the jury on the elements of the charges, the State's burden of proof and the necessity of unanimous verdicts. The court received and considered a presentence report. The sentences the superior court imposed were within legal ranges.

#### CONCLUSION

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

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<sup>2</sup> Absent material revisions after the date of an alleged offense, we cite to a statute's current Westlaw version.

¶18 After the filing of this decision, defense counsel's obligations pertaining to Montoya's representation in this appeal have ended. Defense counsel need do no more than inform Montoya 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, Montoya has 30 days from the date of this decision to proceed, if he wishes, with a *pro per* motion for reconsideration. He 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/  
PATRICIA A. OROZCO, Judge

/s/  
LAWRENCE F. WINTHROP, Judge