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: 03/06/2012
RUTH A. WILLINGHAM, CLERK
BY: DLL

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA, Appellee,	No. 1 CA-CR 11-0299
v.	DEPARTMENT B
MANUEL RAMIREZ, Appellant.	**MEMORANDUM DECISION** (Not for Publication - Rule 111, Rules of the Arizona Supreme Court)

Appeal from the Superior Court in Maricopa County

Cause No. CR2009-007665-001 DT

The Honorable Lisa Daniel Flores, Judge

AFFIRMED

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

The Hopkins Law Office, P.C. — Tucson
By Cedric Martin Hopkins
Attorney for Appellant

Manuel Ramirez — Florence
Appellant

S W A N N, Judge

¶1 Manuel Ramirez ("Defendant") timely appeals from his convictions, one for the molestation of a child, the other for

the attempted molestation of a child. Pursuant to *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), defense counsel advises us that a thorough search of the record has revealed no arguable question of law and requests that we review the record for fundamental error. *See State v. Richardson*, 175 Ariz. 336, 339, 857 P.2d 388, 391 (App. 1993). Defendant was given an opportunity to file a supplemental brief *in propria persona* and has done so. Finding no fundamental error after a thorough review of the record, we affirm.

FACTS AND PROCEDURAL HISTORY[1]

¶2 On September 24, 2009, the state charged Defendant with five counts: Count 1, public sexual indecency to a minor, a class 5 felony; Count 2, attempted molestation of a child, a class 3 felony and dangerous crime against children; Counts 3 and 4, molestation of a child, a class 2 felony and dangerous crime against children; and Count 5, sexual conduct with a minor, a class 2 felony and dangerous crime against children. Defendant's trial began on February 8, 2011, before a twelve-member jury and three alternate jurors.

[1] "We view the evidence in the light most favorable to sustaining the [verdict] and resolve all inferences against appellant." *State v. Nihiser*, 191 Ariz. 199, 201, 953 P.2d 1252, 1254 (App. 1997).

¶3 At trial, the victim testified that he first met Defendant in 1988 when Defendant came to the church that the victim and his family attended. When they met, the victim was seven years old and Defendant was ten years older than the victim. A few years later, when the victim was around nine or ten years old, Defendant married the victim's sister.

¶4 The victim testified that as a child he would accompany Defendant to various job sites where Defendant would perform "odd jobs" and "handyman work." In either 1993 or 1994, when the victim was around twelve or thirteen years old, he went with Defendant to paint a condominium. To get materials for the painting job, Defendant and the victim had pulled some old newspapers out of a dumpster in a grocery store's parking lot. When they arrived at the condominium and set up the newspapers, it turned out that the newspapers contained pornographic images. Defendant took the newspaper images into the condominium's bedroom and began masturbating. In the bedroom, Defendant asked the victim if he could "see [his] butt" and the victim pulled down his pants to his knees. Later, the victim did not tell anyone about what had happened at the condominium.

¶5 The victim also testified that he could recall two incidents when Defendant rubbed his penis on the victim's buttocks. The first took place in Defendant's apartment while his wife was at work. Defendant said that "he wanted to have

anal sex." Although the victim said "no, no way," Defendant kept persisting. The victim finally agreed, but on two conditions: that Defendant give him a Shaquille O'Neal basketball card and that Defendant not "penetrate." In the bedroom, both the victim and Defendant removed their pants. Defendant placed his penis against the victim's posterior while making a "back and forth motion." Because Defendant kept pushing harder, the victim "finally just moved out of the way" while Defendant "masturbated himself." At the time of this incident, the victim was 13 years old.

¶6 According to the victim's testimony, a similar incident happened in the same year. When the victim went with Defendant to a landscaping job at a house in the Encanto district, the owner left and the two were alone in a backyard that was "dense" with "heavy foliage." Defendant told the victim that "he wanted to do something as far as having anal sex again." Defendant was "persistent," and the victim "found [himself] with [his] pants down to [his] ankles against the AC unit" that was in the backyard. Defendant placed his penis on the victim and did "the back and forth motion."

¶7 The victim also testified about an alleged incident in which he and Defendant "were masturbating each other." They were alone in Defendant's apartment, and Defendant played a pornographic video on the television in the living room. At

Defendant’s request, the victim placed his hand on Defendant’s penis while Defendant placed his hand on the victim’s.

¶8 Finally, the victim testified about another incident in which Defendant promised him a “whole set of basketball cards.” Again, the victim asked Defendant to “not penetrate,” but Defendant kept pushing “a little harder and harder.” Eventually, Defendant ejaculated on the victim, who was “upset” and “grossed out.” The victim testified that at the time of the incident he was 13.

¶9 Although the crimes charged against Defendant were alleged to have taken place between 1992 and 1996, the victim did not tell the police about these incidents until February 2009. The victim, to explain his delay in reporting what happened between him and Defendant, testified that he “had never really thought of what we had done” until he encountered a book. The book was called “How and When to Tell Your Kids About Sex,” and it contained a chapter called “Preventing Sexual Abuse,” which was “very descriptive.” The victim, who had “never really read a thing like that in . . . [his] adult life,” said that after reading that book “things really surfaced up.”[2]

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[2] Wendy Dutton, testifying as an expert in child abuse and its assessment, explained that children often do not disclose sexual abuse because of their sense of “shared responsibility.” She also explained that a victim can maintain a seemingly normal relationship with an abuser, even into adulthood, because of a “trauma bond.”

¶10 After reading that book, the victim talked about the sexual abuse with two pastors at his church, and they recommended that he speak with Roger Marshall, a church member who was also a detective. After his meeting with Marshall, the victim decided to call Defendant on the telephone, confront him about the incidents, and record the conversations. The victim made three such recordings and gave them to the police on a CD. The calls were mainly in Spanish.

¶11 Translations of the transcripts for all three of the telephone calls were read out to the jury. The judge instructed the readers to deliver a "plain reading" rather than a "reenactment." In one of the passages read to the jury, Defendant asks, "What did we do?" The victim's recorded answer was:

> And -- and -- and we actually did it. I mean, anal sex and all that, Melo.[3] I mean, it's -- it's affected me, and it's affecting me right now, and I need to get it out, and -- and I think I'm glad I called you because I can get it out with you and . . . .

Defendant replied to that by saying:

> I'm sorry, man. I'm sorry . . . . I always -- you were also like a brother to me. I'm sorry. I'm sorry. I don't want to be on bad terms with you. I don't want to be on bad terms with you, with your family, with your girls, with your wife, with anyone.

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[3] The victim testified that "Melo" was Defendant's nickname.

The jury was able to take a copy of the Spanish recordings into their deliberations "to hear the inflections in the voices of those on the recordings."

¶12 The judge instructed the jury about the elements of each charged crime. After deliberating, the jury found Defendant guilty on only two counts: Count 2, attempted molestation of a child, a dangerous crime against children; and Count 4, molestation of a child, a dangerous crime against children.[4]

¶13 On March 25, 2011, the court sentenced Defendant to a 17-year presumptive prison sentence for Count 4. For Count 2, the court imposed a 5-year probation term to begin upon his release from prison. Defendant received 573 days of presentence incarceration credit.

¶14 Defendant timely appeals. We have jurisdiction under A.R.S. § 12-120.21.

DISCUSSION

¶15 We have read the brief written by counsel, we have considered the brief submitted by Defendant, and we have reviewed the entire record. *Leon*, 104 Ariz. at 300, 451 P.2d at 881. Defendant was convicted for both the molestation and

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[4] The court granted Defendant's motion for a directed verdict on Count 1. The state conceded on that count and said that the victim "wavered" as to his age at the time of one of the incidents in Defendant's apartment.

attempted molestation of a child. Under A.R.S. § 13-1410, a "person commits molestation of a child by intentionally or knowingly engaging in or causing a person to engage in sexual contact . . . with a child who is under fifteen years of age." And under § 13-1001, a person can be found guilty of attempting an offense if he "[i]ntentionally does or omits to do anything which, under the circumstances as such person believes them to be, is any step in a course of conduct planned to culminate in commission of an offense." The record reflects that the jury had sufficient evidence to convict Defendant under those statutes. *State v. Arredondo*, 155 Ariz. 314, 316, 746 P.2d 484, 486 (1987) ("To set aside a jury verdict for insufficient evidence it must clearly appear that upon no hypothesis whatever is there sufficient evidence to support the conclusion reached by the jury.").

¶16 In his supplemental brief, Defendant contends that the recordings of the telephone conversations are of such low quality that they are useless as evidence. He quotes grand jury testimony (which has not been included in the record on appeal) for a detective's description of the recordings' quality: it "sounded almost as though you put your head in a fish bowl." But a recording can be of poor quality and still be admissible. *State v. Paul*, 146 Ariz. 86, 87-88, 703 P.2d 1235, 1236-37 (App. 1985). We have listened to the recording; it has, as Defendant

points out, an “echo” and “background noise.” The quality is not so low, however, that it is impossible to discern what is being said. The trial court did not err in admitting it.

¶17 Defendant further contends that the translations in the transcripts do not match the recordings. The record runs counter to that contention in several places. First, Defendant’s counsel admitted on the record that he was having a Spanish speaker review the transcripts. Additionally, the court asked the state whether it could establish for the record that the translations were accurate. The state asked a police officer with certification as a Spanish speaker whether the transcripts were accurate, and the officer said that they were. Finally, the transcripts admitted into evidence were translated by an independent, professional translation service. Defendant does not point to any particular mistranslated word, phrase, or sentence that calls that validity into question. In short, Defendant merely alleges that the conversation was misinterpreted into English but does nothing “to show that he was somehow denied a fair trial by the interpreter's deficiencies.” *State v. Mendoza*, 181 Ariz. 472, 475, 891 P.2d 939, 942 (App. 1995).

CONCLUSION

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

proceedings were conducted according to the Arizona Rules of Criminal Procedure, the evidence presented at trial supports the verdicts, and Defendant was sentenced within the parameters of the law. Accordingly, we affirm Defendant's convictions and sentences. Defense counsel's obligations pertaining to this appeal have come to an end. *See State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984). Unless, upon review, counsel discovers an issue appropriate for petition for review to the Arizona Supreme Court, counsel must only inform Defendant of the status of this appeal and his future options. *Id.* Defendant has 30 days from the date of this decision to file a petition for review *in propria persona.* *See* Ariz. R. Crim. P. 31.19(a). Upon the court's own motion, Defendant has 30 days from the date of this decision in which to file a motion for reconsideration.

/s/
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PETER B. SWANN, Judge

CONCURRING:

/s/
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MARGARET H. DOWNIE, Presiding Judge

/s/
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DONN KESSLER, Judge