

NOTE: 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. 31.34



DIVISION ONE
FILED: 03/22/2012
RUTH A. WILLINGHAM,
CLERK
BY: DLL

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) No. 1 CA-CR 11-0446
)
Appellee,) DEPARTMENT A
)
v.) MEMORANDUM DECISION
)
ALEX NARANJO,) (Not for Publication -
) Rule 111, Rules of the
Appellant.) Arizona Supreme Court)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2010-152194

The Honorable Michael W. Kemp, Judge

AFFIRMED

Thomas C. Horne, 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 Christopher V. Johns, Deputy Public Defender
Attorneys for Appellant

Alex Naranjo Buckeye
Appellant

T I M M E R, Judge

¶1 Alex Naranjo appeals his convictions and sentences after a jury convicted him of two counts of second-degree murder, two counts of endangerment with a substantial risk of imminent death, and three counts of endangerment with a substantial risk of imminent physical injury. Naranjo's counsel filed a brief in accordance with *Anders v. California*, 386 U.S. 738 (1967) and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), advising this court that after a search of the entire record on appeal, he found no arguable question of law that is not frivolous. Naranjo filed a supplemental brief in propria persona, presenting one issue. For the following reasons, we affirm.

BACKGROUND

¶2 Early in the morning of September 25, 2010, after consuming a substantial amount of alcohol and using cocaine, Naranjo was driving on Interstate 10 when he abruptly turned around and headed the wrong way. He passed several other vehicles, some of which had to swerve to avoid a collision, before he eventually hit a small car head-on, killing occupants A.M. and M.J. Naranjo was travelling at 56 miles per hour at impact and A.M. and M.J. were traveling at 74 miles per hour. Naranjo's blood alcohol content at the time of the collision was .20.

¶13 Naranjo was indicted for two counts of second-degree murder and five counts of endangerment with a substantial risk of imminent death. A jury found him guilty of both counts of second-degree murder and two counts of endangerment as charged. The jury also found him guilty of three lesser-included crimes of endangerment with a substantial risk of imminent physical injury.

¶14 Naranjo admitted to three aggravators: (1) that the offense was committed with a motor vehicle while his blood alcohol content was 0.15 or greater, (2) that he realized he was too intoxicated to drive at the time of the offense, and (3) that the offense caused physical, emotional, or financial harm to the victims or the deceased victims' immediate family. The trial court sentenced Naranjo to seventeen years for each count of murder, to be served consecutively, with 265 days of pre-sentence incarceration credit. The trial court further sentenced him to 1.5 years' imprisonment for each count of endangerment with risk of death and six months for each count of endangerment with risk of physical injury, all to be served concurrently with the murder sentences.

DISCUSSION

¶15 Naranjo argues the crime of second-degree murder encompasses only premeditated, intentional homicides, rather than reckless killings, and therefore he should have been

charged and convicted of a lesser offense. He is incorrect.

Arizona Revised Statute section 13-1104 (West 2012)¹ provides:

A. A person commits second degree murder if without premeditation:

1. The person intentionally causes the death of another person, . . . or

2. Knowing that the person's conduct will cause death or serious physical injury, the person causes the death of another person, . . . or

3. Under circumstances manifesting extreme indifference to human life, the person recklessly engages in conduct that creates a grave risk of death and thereby causes the death of another person

. . . .

The State indicted Naranjo for second-degree murder under subsection 3. The State argued that Naranjo's conduct - including using cocaine and being heavily intoxicated and then choosing to drive, and then going over 50 miles an hour the wrong way down the highway - constituted circumstances manifesting extreme indifference to human life. After the close of the State's case, the trial court rejected Naranjo's Rule 20 motion that insufficient evidence existed to find Naranjo guilty of second-degree murder. The court instructed the jury on the lesser offenses of manslaughter and negligent homicide, but the

¹ Absent material revision after the date of an alleged offense, we cite a statute's current Westlaw version.

jury nevertheless found Naranjo guilty of two counts of second-degree murder. We do not discern error.

CONCLUSION

¶6 After the filing of this decision, counsel's obligations pertaining to Naranjo's representation in this appeal have ended. Counsel need do no more than inform Naranjo of the status 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. *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984). Naranjo shall have thirty days from the date of this decision to proceed, if he desires, with an in propria persona motion for reconsideration or petition for review.

/s/

Ann A. Scott Timmer, Judge

CONCURRING:

/s/

Maurice Portley, Presiding Judge

/s/

Andrew W. Gould, Judge