

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

FILED BY CLERK

JUN 29 2012

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

| | | |
|-----------------------|---|----------------------------|
| THE STATE OF ARIZONA, |) | 2 CA-CR 2012-0008 |
| |) | DEPARTMENT A |
| Appellee, |) | |
| |) | <u>MEMORANDUM DECISION</u> |
| v. |) | Not for Publication |
| |) | Rule 111, Rules of |
| JASON ANTHONY YANCEY, |) | the Supreme Court |
| |) | |
| Appellant. |) | |
| _____ |) | |

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20101884001

Honorable Howard Fell, Judge Pro Tempore

AFFIRMED

Lori J. Lefferts, Pima County Public Defender
By Kristine Maish

Tucson
Attorneys for Appellant

H O W A R D, Chief Judge.

¶1 Appellant Jason Anthony Yancey was convicted after a jury trial of aggravated assault and attempted first degree murder, both dangerous offenses. The trial court sentenced him to concurrent prison terms, the longest of which was 10.5 years. Counsel has filed a brief in compliance with *Anders v. California*, 386 U.S. 738 (1967),

and *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999), stating she has reviewed the record and has found no “meritorious issue to appeal.” Counsel has asked us to search the record for error. Yancey has not filed a supplemental brief.

¶2 Viewed in the light most favorable to sustaining the verdict, the evidence was sufficient to support the jury’s finding of guilt. *See State v. Tamplin*, 195 Ariz. 246, ¶ 2, 986 P.2d 914, 914 (App. 1999). The evidence presented at trial showed that, in May 2010, Yancey repeatedly kicked the victim for an extended period of time, causing life-threatening injuries. A.R.S. §§ 13-105(13), (39);¹ 13-1001(A); 13-1105(A)(1); 13-1203(A)(1); 13-1204(A)(1).

¶3 Counsel suggests that imposition of presumptive prison terms was “excessive” given Yancey’s mental illness and drug addiction. As long as a sentence is within the permissible statutory limits, we will not modify or reduce it unless it is clearly excessive. *See State v. Gillies*, 142 Ariz. 564, 573, 691 P.2d 655, 664 (1984). We find no basis in the record to conclude Yancey’s sentences were clearly excessive. *See generally State v. Patton*, 120 Ariz. 386, 388, 586 P.2d 635, 637 (1978) (appropriate sentence within statutory range rests in trial court’s discretion; abuse of discretion characterized by arbitrariness, capriciousness, or failure to conduct adequate investigation into necessary facts). Yancey’s sentences were within the prescribed statutory range and were imposed lawfully. A.R.S. §§ 13-704(A); 13-1001(C); 13-1105(D); 13-1204(D).

¹This section was amended after Yancey’s offenses, but because the relevant portions have not changed, we cite the current version. 2011 Ariz. Sess. Laws, ch. 90, § 1, ch. 114, § 1.

¶4 Pursuant to our obligation under *Anders*, we have searched the record for fundamental, reversible error and have found none. Therefore, we affirm Yancey's convictions and sentences.

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

CONCURRING:

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Presiding Judge

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Judge