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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

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| THE STATE OF ARIZONA,<br><br>Appellee,<br><br>v.<br><br>THOMAS RAY REASONS,<br><br>Appellant. | ) | 2 CA-CR 2010-0379<br>DEPARTMENT B<br><br>MEMORANDUM DECISION<br>Not for Publication<br>Rule 111, Rules of<br>the Supreme Court |

APPEAL FROM THE SUPERIOR COURT OF GILA COUNTY

Cause No. CR20090667

Honorable Peter J. Cahill, Judge

AFFIRMED

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Emily Danies
Tucson
Attorney for Appellant

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K E L L Y, Judge.

**¶1** Following a jury trial, appellant Thomas Reasons was convicted of one count each of aggravated assault; aggravated assault, a domestic violence offense; threatening and intimidating, a domestic violence offense; and criminal damage, a domestic violence offense. After finding Reasons had two prior felony convictions, the trial court sentenced him to an enhanced, partially aggravated, fifteen-year term of imprisonment on the aggravated assault charge; a consecutive, enhanced, partially aggravated, five-year term on the domestic-violence aggravated assault charge; and to time served on the remaining two charges. 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 "[n]o arguable question of law" to raise on appeal. Counsel has asked us to search the record for fundamental error.

**¶2** Reasons has filed a supplemental brief in which he asserts the state wrongfully "amended the indictment" without his consent by filing notices alleging he had committed the charged offenses while on parole and had historical prior felony convictions and by alleging aggravating factors for sentencing. Citing Rule 13.5(b), Ariz. R. Crim. P., Reasons claims his consent was required to "remedy a formal or technical defect" and the grand jury was required to amend the indictment. But Rule 13.5(a) provides the state "may amend an indictment, information or complaint to add an allegation of one or more prior convictions or other non-capital sentencing allegations that must be found by a jury within the time limits of Rule 16.1(b), [Ariz. R. Crim. P.]" That is precisely what the state did here. Reasons, who did not object below, has

therefore failed to establish any error, much less fundamental error, in this regard. *See State v. Henderson*, 210 Ariz. 561, ¶ 19, 115 P.3d 601, 607 (2005) (defendant who fails to object below forfeits right to review for all but fundamental error).

**¶3** Reasons also argues, as he did below, that his right to protection from double punishment was violated because he was convicted of criminal damage and the court "use[d] it again as an aggravator," and because he was convicted of "threatening and committing the aggravated assault all at the same time in the same action." But when, as here, double jeopardy is alleged to result from cumulative sentences imposed in a single trial, "the Double Jeopardy Clause does no more than prevent the sentencing court from prescribing greater punishment than the legislature intended." *Missouri v. Hunter*, 459 U.S. 359, 366 (1983). And both of the aggravating circumstances Reasons identifies are enumerated aggravating factors. A.R.S. § 13-701(D)(1), (3).[1] Thus, the punishment imposed here was authorized by the legislature and no double jeopardy violation occurred.

**¶4** 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 Reasons had thrown to the ground his sixty-five-year-old mother, who suffered from rheumatoid

[1]The aggravating circumstance set forth in § 13-701(D)(1), infliction or threatened infliction of serious physical injury, cannot be used to aggravate a sentence when that circumstance "is an essential element of the offense of conviction." But here it was not an element of "the offense of conviction"—aggravated assault—but rather arguably was an element of a separately charged offense of which Reasons was also convicted—threatening and intimidating.

arthritis and used a cane to walk; had put her in a "choke hold," threatened to kill her, and broken her eyeglasses; and had stabbed victim T., who had been involved in a fight between Reasons and one of Reasons's relatives after Reasons assaulted his mother.

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

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge

CONCURRING:

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge