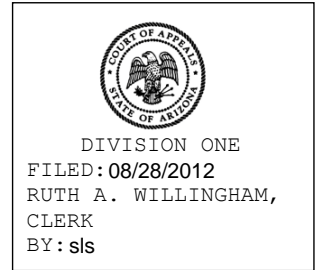


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



STATE OF ARIZONA,)	1 CA-CR 11-0442
)	
)	DEPARTMENT A
Appellee,)	
)	
v.)	MEMORANDUM DECISION
)	(Not for Publication -
NICHOLAS RUBEN PADILLA,)	Rule 111, Rules of the
)	Arizona Supreme Court)
Appellant.)	
)	
)	

Appeal from the Superior Court in Mohave County

Cause No. S8015CR201000327

The Honorable Derek Carlisle, Judge Pro Tempore

AFFIRMED

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

Jill L. Evans, Mohave County Appellate Defender	Kingman
By Jill L. Evans	
Attorneys for Appellant	

K E S S L E R, Judge

¶1 Defendant-Appellant Nicholas Ruben Padilla ("Padilla") was tried and convicted of riot, a class 5 felony; criminal damage, a class 2 misdemeanor; and assault, a class 1 misdemeanor. Padilla received suspended sentences and a total of five years' probation, plus incarceration equal to time served. Counsel for Padilla filed a brief in accordance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999). Finding no arguable issues to raise, counsel requests that this Court search the record for fundamental error. Padilla was given the opportunity to, but did not file, a *pro per* supplemental brief. For the reasons that follow, we affirm Padilla's convictions and sentences.

FACTUAL AND PROCEDURAL HISTORY

¶2 On a Saturday night in April 2010 a large group of youths in their teens and early twenties were partying at "secret beach" in the Mohave Valley. Later that night or sometime after midnight the next morning, C.C., who was 19 years old at the time, invited some of the people from the beach party to his house in Bullhead City where he lived with his brother, stepfather, and mother ("F.B."). Later, another group of partiers, including Padilla, decided to go to the party at C.C.'s home, arriving shortly before 3:00 a.m. Witnesses differed as to whether members of this second group of

approximately twenty young adults were invited to C.C.'s home, but shortly after they arrived, a fight broke out. It is unclear how the fight began, but it quickly escalated. Members of the group tried to get inside, but C.C. and his friends secured themselves inside the home, at which point the people outside the house began breaking the front windows of the home and kicking and jumping on F.B.'s car, severely damaging it. A witness testified that he saw Padilla punch out a window above the front door and also saw him in the vicinity of the car while it was being vandalized. F.B. incurred upwards of \$6000 in damage to her home and car.

¶3 Soon after the melee, Padilla and some of his friends dispersed, and the Bullhead City police arrived on the scene. Witnesses who remained at the home informed police that Padilla was present at the fight.

¶4 Later that Sunday night, in an unrelated incident, Padilla and some friends went to a private park at a suburban subdivision to "back-up" Padilla's cousin in a fight. It was rumored that his cousin would be "jumped" by thirty people.

¶5 When they arrived, they found approximately between five and ten people there. The person Padilla's cousin was supposed to fight, E.G., was in the hot tub with three friends, including the assault victim, as well as two other residents who were unrelated to the group. The people in the hot tub refused

to open the gate, so someone in Padilla's group of seven climbed over the gate and let the rest of them in. E.G. had his arm in a sling and said he did not want to fight and had no idea what they were talking about. Padilla's cousin tried to get others in the group to fight but they all refused. Words were exchanged and Padilla admits shoving the victim into the hot tub. A fight ensued. All the witnesses, including Padilla, agreed that he was the first one to make physical contact. After the fight appeared to be over and the victim began standing up, someone kicked him in the face. Testimony conflicts as to whether it was Padilla or his cousin, but the victim testified that both boys kicked him. Police arrived to find the victim injured and bleeding from the face.

¶6 For the incident at C.C.'s home, the State charged Padilla with Count 1: riot, a class 5 felony, in violation of Arizona Revised Statutes ("A.R.S.") section 13-2903 (2010); and Count 2: criminal damage in excess of \$1000, a class 6 felony in violation of A.R.S. § 13-1602(A)(1), (B)(6) (2010). For the fight at the hot tub, Padilla was charged with Count 3: riot, a class 5 felony, in violation of A.R.S. § 13-2903, and Count 4, assault, a class 1 misdemeanor, in violation of A.R.S. § 13-1203(A)(1), (B) (2010). The jury found Padilla not guilty as to Count 3. On Count 2, the jury found that Padilla was responsible for \$250 in damage, which is the threshold for a

class 2 misdemeanor, as opposed to the original class 6 felony charge. The jury convicted him as charged on Counts 1 and 4. The court sentenced him to five years' probation, as well as incarceration equal to time served, which is below the statutory maximum sentence for his offenses. A.R.S. §§ 13-702(D) (2010), 13-707(A) (2009).

DISCUSSION

¶7 In an *Anders* appeal, this Court must review the entire record for fundamental error. Error is fundamental when it affects the foundation of the case, deprives the defendant of a right essential to his defense, or is an error of such magnitude that the defendant could not possibly have had a fair trial. See *State v. Henderson*, 210 Ariz. 561, 567, ¶ 19, 115 P.3d 601, 607 (2005); *State v. Gendron*, 168 Ariz. 153, 155, 812 P.2d 626, 628 (1991). In addition, we will only reverse if the defendant can prove the error prejudiced him. *Henderson*, 210 Ariz. at 567, ¶ 20, 115 P.3d at 607.

¶8 After a thorough review of the record, we find no fundamental error. Padilla was represented at all stages of the proceedings below, received a fair trial, and the sentence imposed was within the sentencing limits. Furthermore, the State submitted sufficient evidence to support each element of the crimes for which he was convicted. In reviewing the sufficiency of evidence at trial, "[w]e construe the evidence in

the light most favorable to sustaining the verdict, and resolve all reasonable inferences against the defendant." *State v. Greene*, 192 Ariz. 431, 436, ¶ 12, 967 P.2d 106, 111 (1998). "Reversible error based on insufficiency of the evidence occurs only where there is a complete absence of probative facts to support the conviction." *State v. Soto-Fong*, 187 Ariz. 186, 200, 928 P.2d 610, 624 (1996) (quoting *State v. Scott*, 113 Ariz. 423, 424-25, 555 P.2d 1117, 1118-19 (1976)).

¶9 To convict Padilla for riot at the home of F.B., the State needed to prove that he acted recklessly, together with at least two others "to use force or violence . . . which disturbs the public peace." A.R.S. § 13-2903(A). Several witnesses testified that more than two members of Padilla's group used force to cause significant damage to the home and car; that residents and guests at the home were disturbed by the events; and a witness testified that he saw Padilla break a window. Thus, if the jury believed Padilla participated in the riot, he was necessarily acting together with more than two others, satisfying all elements of the crime.

¶10 The State also presented ample evidence to convict Padilla of assault. Padilla admitted he intentionally made the first physical contact with the victim, and there is evidence that Padilla kicked the victim in the face. The State presented a photo of the victim's injuries, and the officer who arrived at

the scene testified that the victim was bleeding. Thus, the evidence supported the elements of class 1 misdemeanor assault, that a person intentionally caused physical injury to another. A.R.S. § 13-1203(A) (1), (B).

¶11 Finally, the State presented sufficient evidence to convict Padilla of criminal damage in the amount of \$250 or less. A.R.S. § 13-1602(A) (1), (B) (6). The elements of criminal damage as charged in his indictment require that Padilla, acting recklessly, defaced or damaged another's property. A.R.S. § 13-1602(A) (1). The State presented evidence that Padilla damaged property and that the total value for all of the damage exceeded \$6000. The jury could reasonably find that Padilla was responsible for \$250 of that damage, thus satisfying all elements of class 2 misdemeanor criminal damage.

CONCLUSION

¶12 Because the evidence supports the verdicts, and the record reveals no fundamental error, we affirm Padilla's convictions and sentences. Upon the filing of this decision, counsel shall inform Padilla of the status of the appeal and his options. Defense counsel has no further obligations, 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).

Padilla shall have thirty days from the date of this decision to proceed, if he so desires, with a *pro per* motion for reconsideration or petition for review.

/S/

DONN KESSLER, Judge

CONCURRING:

/S/

ANN A. SCOTT TIMMER, Presiding Judge

/S/

PATRICIA K. NORRIS, Judge