

**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: 10/18/2012
RUTH A. WILLINGHAM,
CLERK
BY: sls

**IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE**

STATE OF ARIZONA,) 1 CA-CR 11-0496
)
Appellee,) Department B
)
v.) **MEMORANDUM DECISION**
) (Not for Publication-
GARY THOMAS KELLEY,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
)
)

Appeal from the Superior Court of Maricopa County

Cause No. CR2010-123572-001DT

The Honorable Susan M. Brnovich, Judge

AFFIRMED

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

James J. Haas, Maricopa County Public Defender Phoenix
By Kathryn L. Petroff, Deputy Public Defender
Attorneys for Appellant

T H O M P S O N, Judge

¶1 This case comes to us as an appeal under *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz.

297, 451 P.2d 878 (1969). Counsel for Gary Thomas Kelley (defendant) has advised us that, after searching the entire record, she has been unable to discover any arguable questions of law and has filed a brief requesting this court conduct an *Anders* review of the record. Defendant has been afforded an opportunity to file a supplemental brief *in propria persona* which he has done.

¶2 At approximately 1:00 p.m. on the afternoon of May 6, 2010, defendant walked two houses south of his own home to the home of victim J.V. where J.V. was working outside. A verbal altercation between defendant and J.V. ensued. J.V.'s brother, victim A.V., also became involved and during the course of the argument, the three men ended up on the sidewalk in front of their neighbor Joe's house. The victims stood approximately two to four feet from defendant. Joe came to his front door and witnessed the dispute through his screen. J.V. kicked at defendant. Defendant then removed a gun from his waistband and fired one shot which hit J.V. in the side of his face, killing him. Defendant then pointed and cocked the gun at A.V. but did not shoot. Defendant turned around and returned to his own home.

¶3 Defendant was charged with two counts: second degree murder, a class 1 dangerous felony, as to J.V. and aggravated assault, a class 3 dangerous felony, as to A.V. Defendant was

convicted, on both counts, after a jury trial in which he testified. At trial he made a claim of self-defense. He was sentenced to an aggravated sentence of 20 flat years on count one and a presumptive term of 7.5 years on count two, to be served consecutively. He received 425 days presentence incarceration credit. Defendant timely appealed.

¶14 We have read and considered counsel's brief and have searched the entire record for reversible error. See *Leon*, 104 Ariz. at 300, 451 P.2d at 881. We find none. All of the proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure, and the sentence imposed was within the statutory limits. Pursuant to *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984), defendant's counsel's obligations in this appeal are at an end.

¶15 We affirm the convictions and sentences.

/s/

JON W. THOMPSON, Judge

CONCURRING:

/s/

PATRICIA A. OROZCO, Presiding Judge

/s/

LAWRENCE F. WINTHROP, Judge