

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: 08/28/2012
RUTH A. WILLINGHAM,
CLERK
BY: sls

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) No. 1 CA-CR 11-0609
)
Appellee,) DEPARTMENT D
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
THOMAS JAMES ODOM,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2010-121445-001

The Honorable Karen L. O'Connor, Judge

AFFIRMED

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

Michael J. Dew Phoenix
Attorney for Appellant

S W A N N, Judge

¶1 Defendant Thomas James Odom appeals his conviction and sentence for first-degree murder. 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). Defendant's

appellate counsel has searched the record on appeal and found no arguable nonfrivolous question of law and asks us to review the record for fundamental error. See *Anders*, 386 U.S. 738; *Smith v. Robbins*, 528 U.S. 259 (2000); *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999). Defendant was given the opportunity to file a supplemental brief *in propria persona* but did not do so.

¶12 We have searched the record for fundamental error and find none. Accordingly, we affirm.

FACTS AND PROCEDURAL HISTORY

¶13 In April 2010, Defendant was indicted for sexual assault and first-degree murder, charged in the alternative as premeditated or felony murder. He was arraigned and entered a not guilty plea, and he was found competent to stand trial after undergoing evaluation pursuant to Ariz. R. Crim. P. 11.

¶14 At trial, the state presented evidence of the following facts. The afternoon of April 21, 2010, in El Mirage, Arizona, the fifteen-year-old victim was last seen leaving a local library and walking down the street with the sixteen-year-old Defendant. That evening, police received a report that the victim's dead body had been found in a nearby culvert. Police entered the culvert and saw a corpse partially covered with sand and surrounded by rocks, at least one of which had blood on it. The victim's shirt was pulled up, she wore no pants, and fresh-looking injuries were apparent on her body. An autopsy revealed

that she had facial lacerations, abrasions, and contusions; multiple skull fractures; and a subarachnoid hemorrhage. She also had abrasions on her trunk and extremities and sand in her trachea. The medical examiner opined that the victim's cause of death was multiple blunt force traumas, and the manner of death was homicide.

¶15 The day after the victim's corpse was discovered, police brought Defendant to the police station for an interview. At trial, the jury viewed a video recording of the interview. At the start of the interview, a detective read from a form to advise Defendant of his rights under *Miranda* and of his right to have a parent or guardian present during questioning. Defendant asked to have his father present. Accordingly, except for completing the questions on the *Miranda* form, police asked no more questions of Defendant until his father arrived. Left alone with Defendant in the interview room, without police present, Defendant's father questioned Defendant about what happened. Interpreting the recording of the whispered exchange, the state's case agent testified that Defendant confessed to his father that he killed the victim.

¶16 Police observed injuries on Defendant's body at the time of his arrest, and DNA testing revealed the victim's blood on Defendant's wristwatch. Police were later contacted by Defendant's former cellmate, who reported that Defendant

confessed to having killed his girlfriend. According to the former cellmate, Defendant stated that he had told the victim to accompany him into the culvert to smoke marijuana, and once there, he choked her, wrestled her, beat her, threw stones at her head, filled her mouth with sand, and removed her clothes. The former cellmate testified that Defendant explained he did this because he had always wanted to do it, and there was a voice in his head telling him to do it.

¶17 At the conclusion of the state's case in chief, Defendant moved for judgments of acquittal on both counts. The motions were denied. For his defense, Defendant offered the testimony of various third-party witnesses, but he did not testify.

¶18 After considering the evidence, the jury found Defendant guilty of premeditated first-degree murder and found that the murder was a dangerous offense. The jury found Defendant not guilty of sexual assault. The court entered judgment on the verdict and sentenced Defendant to natural life in prison. Defendant timely appeals his conviction and sentence. We have jurisdiction under Article 6, Section 9 of the Arizona Constitution and A.R.S. §§ 12-120.21(A)(1), 13-4031, and 13-4033(A)(1).

DISCUSSION

¶9 The record reveals no fundamental error. The state properly prosecuted Defendant in the same manner as an adult pursuant to A.R.S. § 13-501(A)(1), and he was found competent to stand trial after the procedures prescribed by Ariz. R. Crim. P. 11 were completed. Defendant was present and represented by counsel at all critical stages. The record of voir dire does not demonstrate the empanelment of any biased jurors, and the jury was properly comprised of twelve jurors and two alternates. See Ariz. R. Crim. P. 18.1(a); A.R.S. § 21-102(A).

¶10 The evidence that the state presented at trial was properly admissible. The state presented evidence that Defendant was the last person seen with the victim, had the victim's blood on his wristwatch, had injuries on his body, and told others that he had killed her. The state also presented evidence that at least one bloody rock was found near the victim's body, and her cause of death was multiple blunt force traumas. The state's evidence was sufficient to allow the jury to find Defendant guilty of first-degree premeditated murder under A.R.S. § 13-1105(A)(1) and to find that the murder was a dangerous offense under A.R.S. §§ 13-105 and 13-704 because it involved the use of the rocks as dangerous instruments. Further, the jury was properly instructed.

¶11 After the jury returned its verdict, the court received and considered a presentence report. At the sentencing hearing, Defendant was given the opportunity to speak, and the court stated on the record the evidence and materials it considered and the factors it found in imposing sentence. The court, in its discretion, imposed a legal sentence of natural life in prison and correctly calculated Defendant's presentence incarceration.

CONCLUSION

¶12 We have reviewed the record for fundamental error and find none. See *Leon*, 104 Ariz. at 300, 451 P.2d at 881. Accordingly, we affirm Defendant's conviction and sentence.

¶13 Defense counsel's obligations pertaining to this appeal have come to an end. See *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984). Unless, upon review, counsel discovers an issue appropriate for petition for review to the Arizona Supreme Court, counsel must only inform Defendant of the status of this appeal and his future options. *Id.* Defendant has thirty days from the date of this decision to file a petition for review *in propria persona*. See Ariz. R. Crim. P. 31.19(a). Upon the court's own motion, Defendant has thirty days from the date of this decision in which to file a motion for reconsideration.

/s/

PETER B. SWANN, Judge

CONCURRING:

/s/

JOHN C. GEMMILL, Presiding Judge

/s/

ANDREW W. GOULD, Judge