

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: 08/09/2012
RUTH A. WILLINGHAM,
CLERK
BY: sls

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) 1 CA-CR 11-0768
)
Appellee,) DEPARTMENT A
)
v.) **MEMORANDUM DECISION**
) (Not for Publication - Rule
MICHAEL SCOTT PALMER,) 111, Rules of the Arizona
) Supreme Court)
Appellant.)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR 2010-156727-001

The Honorable Bruce R. Cohen, Judge

AFFIRMED AS CORRECTED

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

James J. Haas, Maricopa County Public Defender Phoenix
By Spencer D. Heffel, Deputy Public Defender
Attorneys for Appellant

N O R R I S, Judge

¶1 Michael Scott Palmer timely appeals from his conviction and sentence for aggravated assault, a class 3 dangerous felony. After searching the record on appeal and

finding no arguable question of law that was not frivolous, Palmer's counsel filed a brief in accordance with *Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), asking this court to search the record for fundamental error. This court granted counsel's motion to allow Palmer to file a supplemental brief *in propria persona*, but Palmer did not do so. After reviewing the entire record, we find no fundamental error and, therefore, affirm Palmer's conviction and sentence.

FACTS AND PROCEDURAL BACKGROUND¹

¶12 Late in the evening of October 21, 2010, Palmer was sitting at a table outside of a coffee shop with his girlfriend, R.W., and two other acquaintances, R.K. and C.R. C.R., who had been drinking throughout the day, had been calling R.W. offensive names and "yelling [and] making a lot of noise." Palmer and the other witnesses gave differing accounts of what happened next, but agreed a physical altercation broke out between Palmer and C.R. During this altercation, Palmer, who testified he had been smoking methamphetamine earlier that day, pulled a knife from his pocket and stabbed C.R. multiple times along the left side of his body and head. Palmer, R.W., and

¹We view the facts in the light most favorable to sustaining the jury's verdict and resolve all reasonable inferences against Palmer. *State v. Guerra*, 161 Ariz. 289, 293, 778 P.2d 1185, 1189 (1989).

R.K. then went to R.W.'s house. After R.K. left R.W's house, he called the police and told them Palmer had stabbed C.R. The police arrested Palmer and a police detective interviewed him after informing him of his *Miranda* rights. Palmer initially denied stabbing C.R., but eventually told the detective he stabbed C.R. in self-defense after C.R. had grabbed him around his neck.

¶3 At trial, Palmer presented a justification defense, arguing he acted in self-defense. Palmer, R.K., R.W., and C.R. all testified about the events leading up to the stabbing. R.K. and C.R. testified Palmer was the aggressor, but Palmer and R.W. testified that Palmer stabbed C.R. only after C.R. attacked Palmer and put Palmer in fear for his life. The jury found Palmer guilty of aggravated assault and thus implicitly rejected his justification defense. The jury also deliberated over whether the State had proven an aggravating factor, but was unable to reach a unanimous verdict. The superior court sentenced Palmer to the presumptive term of 7.5 years in prison, and gave him 357 days of presentence incarceration credit.

DISCUSSION

¶4 We have reviewed the entire record for reversible error and find none. See *Leon*, 104 Ariz. at 300, 451 P.2d at 881. Palmer received a fair trial. He was represented by

counsel at all stages of the proceedings and was present at all critical stages.

¶15 The evidence presented at trial was substantial and supports the verdict. The jury was properly comprised of eight members and the court properly instructed the jury on the elements of the charge, Palmer's presumed innocence, the State's burden of proof, and the necessity of a unanimous verdict. The superior court received and considered a presentence report, Palmer spoke at sentencing, and his sentence was within the range of acceptable sentences for his offense.

¶16 We note, however, the superior court's sentencing minute entry incorrectly described the offense as "Non Dangerous" and did not list the correct sentencing statute. The grand jury's indictment alleged the offense was dangerous, dangerousness was an inherent element of the offense as charged, see Ariz. Rev. Stat. ("A.R.S.") § 13-105(12)-(13) (2010); *State v. Gatliff*, 209 Ariz. 362, 365, ¶ 17, 102 P.3d 981, 984 (App. 2004) ("A separate jury finding of dangerousness is not required."), and the transcript of the superior court's sentencing hearing reflects the court sentenced Palmer as a dangerous offender under A.R.S. § 13-704(A) (2009). We therefore amend the superior court's sentencing minute entry to describe the offense as "dangerous" and to list A.R.S. § 13-704(A) as the appropriate sentencing statute.

CONCLUSION

¶17 We decline to order briefing and affirm Palmer's conviction and sentence as corrected.

¶18 After the filing of this decision, defense counsel's obligations pertaining to Palmer's representation in this appeal have ended. Defense counsel need do no more than inform Palmer of the outcome of this appeal and his future options, unless, upon review, counsel finds an issue appropriate for submission to the Arizona Supreme Court by petition for review. *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984).

¶19 Palmer has 30 days from the date of this decision to proceed, if he wishes, with an *in propria persona* petition for review. On the court's own motion, we also grant Palmer 30 days from the date of this decision to file an *in propria persona* motion for reconsideration.

/s/
PATRICIA K. NORRIS, Judge

CONCURRING:

/s/
ANN A. SCOTT TIMMER, Presiding Judge

/s/
DONN KESSLER, Judge