

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: 2/19/2013
RUTH A. WILLINGHAM,
CLERK
BY: mjt

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) 1 CA-CR 11-0800
)
Appellee,) DEPARTMENT E
)
) **MEMORANDUM DECISION**
v.) (Not for Publication-
) Rule 111, Rules of the
RUDY MONTANO,) Arizona Supreme Court)
)
Appellant.)
_____)

Appeal from the Superior Court of Maricopa County

Cause No. CR2011-005994-001 DT

The Honorable Roger E. Brodman, 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 Cory Engle, 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 Rudy Montano (defendant), after searching the entire record, 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*, and he has not done so.

¶2 On the evening of November 28, 2010, defendant and his friend K.Y. became involved in an argument outside of a convenience store. F.R. noticed the altercation while returning from the convenience store to his vehicle, but did not interject himself. Defendant approached F.R., asked him "Do you want to die young?" and threatened to use F.R.'s license plate number to later find him. Defendant displayed a knife and began to swing it in a stabbing motion toward F.R., who yelled for help and backed away.

¶3 Defendant pursued F.R. initially, but then left the scene. F.R. reported the incident to the convenience store clerk, O.O., who called the police. The police were unable to locate defendant. Minutes later, K.Y. entered the convenience store and asked to use the telephone. Defendant returned to the convenience store to argue with her once more. After K.Y. left the premises, defendant approached O.O. holding the knife, and told him that if he called the police defendant would kill him.

Police arrested defendant outside a nearby bar. Defendant acknowledged that he had threatened F.R.

¶4 The state charged defendant with one count of aggravated assault, a class 3 dangerous felony (count 1); one count of disorderly conduct, a class 6 felony (count 2); one count of obstructing criminal investigations or prosecutions, a class 5 felony (count 3); and one count of threatening or intimidating, a class 1 misdemeanor (count 4). Defendant pled guilty to the fourth count prior to trial. At trial, defendant testified that F.R. had approached him and that he had acted only in response to threats by F.R.

¶5 Defendant was convicted of all counts after a jury trial. The trial court found that defendant had four prior felony convictions. The court sentenced defendant to a presumptive term of 11.25 years in prison for count 1 and a presumptive term of 5 years for count 3, to be served concurrently. As to count 2, the court sentenced defendant to a presumptive term of 3.75 years, to be served consecutively to count 1. The court sentenced defendant to a term of 6 months in jail on count four. The court gave defendant credit for 329 days of presentence incarceration. Defendant timely appealed.

¶6 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. So far as the record reveals, defendant was adequately represented by counsel at all stages of the proceedings, 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. Defendant has thirty days from the date of this decision in which to proceed, if he so desires, with an *in propria persona* motion for reconsideration or petition for review.

¶7 We affirm the convictions and sentences.

/s/

JON W. THOMPSON, Judge

CONCURRING:

/s/

PATRICIA K. NORRIS, Presiding Judge

/s/

LAWRENCE F. WINTHROP, Judge