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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: 09/18/2012
RUTH A. WILLINGHAM,
CLERK
BY: sls

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) No. 1 CA-CR 11-0847
)
Appellee,) DEPARTMENT D
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
MICHAEL JAMES BEGAYE,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2010-166526-001

The Honorable Lisa Daniel Flores, Judge

Affirmed

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

Bruce F. Peterson, Maricopa County Legal Advocate Phoenix
By Thomas J. Dennis, Deputy Legal Advocate
Attorneys for Appellant

G O U L D, Judge

¶1 Michael James Begaye ("Defendant") appeals from his
convictions and resulting sentences for two counts of

molestation of a child. Both counts are class two felonies, dangerous crimes against children.

¶2 Defendant's counsel filed a brief in accordance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), advising this court that after a search of the entire appellate record, he found no arguable question of law that was not frivolous. Defendant was afforded the opportunity to file a supplemental brief in propria persona, but he has not done so.

¶3 Our obligation in this appeal is to review "the entire record for reversible error." *State v. Clark*, 196 Ariz. 530, 537, ¶ 30, 2 P.3d 89, 96 (App. 1999). We have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution and Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1) (2003), 13-4031 and -4033.A.1 (2010).¹ Finding no reversible error, we affirm.

Facts and Procedural History²

¶4 In the fall of 2010, victims J.B. and E.B., who at that time were nine and eleven years old respectively, reported

¹ Unless otherwise specified, we cite to the current version of the applicable statutes because no revisions material to this decision have occurred.

² We view the evidence in the light most favorable to sustaining the convictions and resulting sentences. See *State v. Guerra*, 161 Ariz. 289, 293, 778 P.2d 1185, 1189 (1989).

to the police their 33 year-old brother, the Defendant, touched them inappropriately. The State subsequently charged Defendant with two counts of molestation of a child.

¶5 At trial, E.B. testified that Defendant came into the bedroom where he and J.B. had been sleeping, reached under their clothing and touched their penises. E.B. testified he later told a detective that he saw Defendant "put his [penis] against [J.B.'s] butt." J.B. also testified at trial. In describing the subject incident, J.B. testified that he woke up and saw Defendant touching E.B.'s penis; Defendant then began to touch J.B. J.B. further testified that when Defendant was touching him, Defendant's hand was "moving." J.B. told Defendant to "quit it," but Defendant responded "you ain't the boss of me."

¶6 In response to Defendant's actions, E.B. and J.B. went to sleep with their sister, B.B., who was twelve years old at that time. A short while later, Defendant entered B.B.'s bedroom and told E.B. and J.B. they shouldn't be in her bedroom. E.B. and J.B. then left B.B.'s bedroom. B.B. testified after the victims left she "got a feeling" and got up to check on them. When B.B. went to the victims' bedroom, she saw Defendant lying in bed with E.B. and J.B. B.B. then went back to bed.

¶7 Later, around 3:30 a.m., E.B. and J.B. returned to B.B.'s bedroom. B.B. observed that E.B. was crying. The victims then told B.B. about how Defendant had touched them

earlier that night. Defendant subsequently returned to B.B.'s bedroom and told the victims they should not be in B.B.'s bedroom. At that time, the boys asked B.B. if she would lie down with them; B.B. agreed, grabbed her blankets and pillows, and lay down with E.B. and J.B in their bedroom.³

¶18 At trial, B.B. denied that E.B. or J.B. had told her Defendant had touched them. B.B. conceded, however, that she told a detective the victims did advise her Defendant had touched them. B.B. explained this inconsistency by claiming that she reported the incident to the detective because she was mad at Defendant.

¶19 The evidence at trial also established that E.B., J.B. and B.B. reported the incident to their sister, C.S. C.S. testified at trial that at the time of the incident, C.S. did not live at the victim's residence. C.S eventually reported the incident to the police. After a six-day trial, Defendant was convicted on two counts of child molestation and was sentenced to presumptive prison terms of seventeen years as to each count.⁴ The court ordered the two counts to be served

³ B.B. told her sister, a detective and CPS Workers that Defendant left the boys' room when she went in to sleep with them. However, at trial B.B. denied she saw Defendant return to his room.

⁴ The jury further found the state had proven the aggravating factors of emotional harm to the victims and betrayal of trust.

consecutively, and further ordered Defendant receive 332 days credit as to count one. Defendant timely appealed.

Conclusion

¶10 We have read and considered counsel's brief, carefully searched the entire record for reversible error and found none. *Clark*, 196 Ariz. at 541, ¶ 49, 2 P.3d at 100. All of the proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure and substantial evidence supported the finding of guilt. There is sufficient evidence to support the jury's verdicts finding Defendant guilty on both counts of child molestation. Defendant was present and represented by counsel at all critical stages of the proceedings. At sentencing, Defendant and his counsel were given an opportunity to speak and the court imposed a legal sentence.

¶11 Counsel's obligations pertaining to Defendant's representation in this appeal have ended. Counsel need do nothing more than inform Defendant of the status of the appeal and his future options, unless counsel's review reveals 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). Defendant shall have thirty days from the date of this decision to proceed, if he so desires,

with an in propria persona motion for reconsideration or petition for review.⁵

/S/
ANDREW W. GOULD, Judge

CONCURRING:

/S/
JOHN C. GEMMILL, Presiding Judge

/S/
PETER B. SWANN, Judge

⁵ Pursuant to Arizona Rule of Criminal Procedure 31.18(b), Defendant or his counsel has fifteen days to file a motion for reconsideration. On the court's own motion, we extend the time to file such a motion to thirty days from the date of this decision.