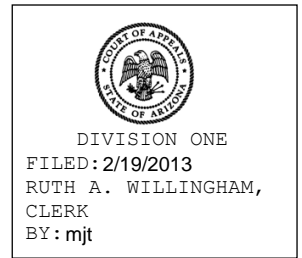


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES. See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



STATE OF ARIZONA,) No. 1 CA-CR 12-0038
)
Appellee,) DEPARTMENT D
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
JOHN FREDERICK FARINAS, JR.,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. CR2009-006054-001

The Honorable Warren J. Granville, 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, Legal Advocate Phoenix
By Kerri L. Chamberlin, Deputy Legal Advocate
Attorneys for Appellant

G O U L D, Judge

¶1 John Frederick Farinas, Jr. ("Farinas") appeals from his convictions and sentences for conspiracy to commit first degree murder, a class one felony; solicitation of first degree

murder, a class three felony; assisting a criminal street gang, a class three felony; and attempted hindering prosecution in the first degree involving murder, a class four felony.

¶2 Farinas' 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. Farinas 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), 13-4031 and 13-4033(A)(1) (West 2012).¹ Finding no reversible error, we affirm.

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

Facts and Procedural History²

¶4 The evidence presented at trial established that Farinas was a lieutenant in the Mexican Mafia, one of the most powerful active prison gangs in Arizona. Investigator B., a special investigator in the security threat group unit of the Arizona Department of Corrections assigned to investigate prison gangs, testified that the tattoos on Farinas' chest were of the Mexican Mafia patch and of "Carnalismo," which are both known to be associated with membership in the Mexican Mafia. Due to his high rank in the Mexican Mafia, Farinas had the authority to order hits on behalf of the gang.

¶5 Between February 3, 2006 and February 4, 2006, Farinas made three phone calls from the Fourth Avenue Maricopa County jail, all of which were recorded, transcribed, and introduced as exhibits at trial. The evidence showed that during these three phone calls, Farinas ordered the murder of Manny Diaz ("Diaz"), a member of the South Side 9th Street gang. Farinas targeted Diaz, because Diaz had agreed to testify against three members of the Mexican Mafia, Robert Harvill, Juan Montiel, and Martin Avalos, in the murder case of Lorenzo Peralta.

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).

¶6 Diaz's involvement with the Mexican Mafia caught the attention of law enforcement in February 2005, when he kidnapped his girlfriend, Yvette Leon ("Leon"), in an attempt to discover the whereabouts of Leon's distant cousin, Alex Lerma ("Lerma"). Diaz wanted to find Lerma, because Lerma had been spreading information that Diaz was the last person Peralta had been seen with alive.

¶7 Based on this incident with Leon, Diaz was arrested and charged with kidnapping. Diaz eventually agreed to talk to the police, providing information about the Mexican Mafia, and naming Harvill, Montiel, and Avalos as suspects in the Lorenzo Peralta homicide. In exchange for Diaz's testimony against the Mexican Mafia, the kidnapping charges were dismissed and law enforcement funded his relocation.

¶8 On February 3, 2006, Farinas spoke to Lerma's girlfriend, Maria Peralta ("Maria"), on the phone. In their conversation, Farinas mentioned a "homie" from the "south side" who was "running his mouth." Farinas told Maria to write down an address, "the third house from the corner on the south side" at the cross streets of 77th Avenue and Indian School. At the time, Diaz and his family lived at 4044 North 77th Avenue, near the major cross streets of 77th Avenue and Indian School. Farinas also told Maria he wanted the man at that address (Diaz)

"handled" for his "querido nawe"³ and that if Maria saw Diaz there that somebody in the "familia" (gang) should "go pay him a visit."

¶9 Later that same day, Farinas spoke to Lerma on the phone. Again, Farinas mentioned that he needed somebody to "handle" the man who was "running his mouth . . . from the south side" (Diaz). Farinas told Lerma that he had given Diaz's address to Maria and directed Lerma to "have somebody go see him for me." Lerma asked when Diaz would "hit the gate" (get released from prison) and Farinas replied that the reason he wanted to "stop and see" Diaz was "they're (law enforcement) trying to relocate him."

¶10 On February 4, 2006, Farinas made another phone call to Lerma. Farinas told Lerma that he still did not have any information concerning Diaz's date of release from prison, but that he knew Diaz was "suppose[d] to be touching down here real soon and they're all supposed to be moving."

¶11 Farinas was either present or waived his presence and was represented by counsel throughout all stages of the case. At the conclusion of his trial, the jury found Farinas guilty of all four charged offenses.

³ "Querido nawe" is a term used by members of the Mexican Mafia to refer to a beloved or close mafia member. In this context Farinas used the term to refer to Harvil, a captain in the Mexican Mafia.

¶12 At sentencing, Farinas was given an opportunity to speak at his sentencing hearing. The court found that Farinas had four prior felony convictions and sentenced him to a presumptive prison term of 28 years for count one, 14 and a quarter years for count two, 11 and a quarter years for count three, and 13 years for count 4, to be served concurrently with credit for 932 days served. Three additional years were included in the sentences for counts two and four because they were committed with the intent to promote, further, or assist any criminal conduct by a criminal street gang pursuant to A.R.S. § 13-604(T). The sentences for counts one through four were to be served consecutively to Farinas' prior sentence for assisting a criminal syndicate, conspiracy to commit promoting prison contraband, and promoting prison contraband in Maricopa County Cause No. CR2008-161461-005. Farinas timely appealed.

Discussion

¶13 We have read and considered the entire record and have found no meritorious grounds for reversal of Farinas' convictions or for modification of the sentences imposed. *Clark*, 196 Ariz. at 541, ¶ 50, 2 P.3d at 100. Farinas was present at all critical stages of the proceedings and was represented by counsel. All proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure, and

substantial evidence supported the finding of guilt. Accordingly, we affirm.

Conclusion

¶14 Counsel's obligations pertaining to Farinas' representation in this appeal have ended. Counsel need do nothing more than inform Farinas 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). Farinas 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.⁴

¶15

/S/
ANDREW W. GOULD, Judge

CONCURRING:

/S/
MICHAEL J. BROWN, Presiding Judge

/S/
DONN KESSLER, Judge

⁴ Pursuant to Arizona Rule of Criminal Procedure 31.18(b), Farinas 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.