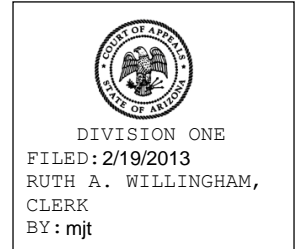


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED  
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24



IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

STATE OF ARIZONA, ) 1 CA-CR 12-0125  
)  
Appellee, ) DEPARTMENT E  
)  
v. ) **MEMORANDUM DECISION**  
) (Not for Publication - Rule  
STEVEN HERNANDEZ, ) 111, Rules of the Arizona  
) Supreme Court)  
Appellant. )  
)

Appeal from the Superior Court in Maricopa County

Cause No. CR 2011-131322-001

The Honorable Karen L. O'Conner, Judge

**AFFIRMED**

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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 Cory Engle, Deputy Public Defender  
Attorneys for Appellant

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N O R R I S, Judge

¶1 Steven Hernandez timely appeals from his convictions and sentences for two counts of disorderly conduct, a class six dangerous felony; one count of aggravated assault, a class three dangerous felony; and one count of unlawful discharge of a

firearm, a class six dangerous felony. See Ariz. Rev. Stat. ("A.R.S.") §§ 13-2904(A)(6) (2010), -1203(A)(2) (2010), -1204(A)(2) (Supp. 2012), -3107(A) (Supp. 2012).<sup>1</sup> After searching the record on appeal and finding no arguable question of law that was not frivolous, Hernandez'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 Hernandez to file a supplemental brief *in propria persona*, but Hernandez did not do so. After reviewing the entire record, we find no fundamental error and, therefore, affirm Hernandez's convictions and sentences.

#### FACTS AND PROCEDURAL BACKGROUND<sup>2</sup>

¶2 At around 1:30 A.M. on June 19, 2011, B.Y. was "hanging out" at his apartment with some friends, including R.M. Meanwhile, Hernandez, joined by a roommate and the roommate's girlfriend, M.J., arrived at the apartment. Although the witnesses' testimony about the chronology of the events differed

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<sup>1</sup>Although the Arizona Legislature amended § 13-1204 and § 13-3107 after the date of Hernandez's offenses, the changes are immaterial. Thus we cite the current version of the statutes.

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

slightly, B.Y. and R.M. testified Hernandez was drunk and had a gun on his lap. At one point, Hernandez pointed the gun at R.M. and B.Y., respectively. They could see his finger on the trigger and told him to stop. B.Y. was a little "concerned," and R.M. did not feel "comfortable," but neither left the room.

¶13 After M.J. exchanged offensive words with Hernandez, he pointed the gun at her knees and asked how she would feel if he shot her knees off. According to M.J., she thought she "might die," although she also felt Hernandez would not hurt people. She then sat next to Hernandez. Hernandez lifted the gun and shot it towards the wall, "almost . . . right in front of [M.J.'s] face."

¶14 Hernandez then left the apartment with the gun, and returned shortly after without the gun. In the meantime, B.Y. called 911. The police arrived and arrested Hernandez.

¶15 The superior court sentenced Hernandez to the presumptive terms of imprisonment for all counts; 2.25 years for each count of disorderly conduct and unlawful discharge, and 7.5 years for aggravated assault, with 218 days of presentence incarceration credit, all counts to run concurrently. See A.R.S. § 13-704(A) (Supp. 2012).

## DISCUSSION

¶16 We have reviewed the entire record for reversible error and find none. See *Leon*, 104 Ariz. at 300, 451 P.2d at 881. Hernandez received a fair trial. He was represented by counsel at all stages of the proceedings and was present at all critical stages.

¶17 The evidence presented at trial was substantial and supports the verdicts. The jury was properly comprised of 12 members and the court properly instructed the jury on the elements of the charges, Hernandez's presumption of innocence, the State's burden of proof, and the necessity of a unanimous verdict. The superior court received and considered a presentence report, Hernandez was given an opportunity to speak -- and did speak -- at sentencing, and his sentences were within the range of acceptable sentences for his offenses.

## CONCLUSION

¶18 We decline to order briefing and affirm Hernandez's convictions and sentences.

¶19 After the filing of this decision, defense counsel's obligations pertaining to Hernandez's representation in this appeal have ended. Defense counsel need do no more than inform Hernandez 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.

