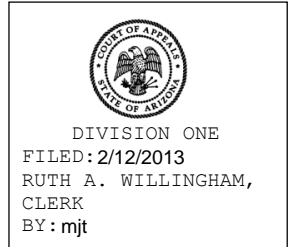


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED  
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24



IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

STATE OF ARIZONA, ) No. 1 CA-CR 12-0192  
)  
) DEPARTMENT E  
Appellee, )  
) **MEMORANDUM DECISION**  
)  
v. )  
) (Not for Publication -  
ALBERTO SAUCEDO, ) Rule 111, Rules of the  
) Arizona Supreme Court)  
Appellant. )  
)  
)  
)

Appeal from the Superior Court in Maricopa County

Cause No. CR 2011-007472-001

The Honorable Kristin C. Hoffman, Judge

**AFFIRMED; JUDGMENT AMENDED**

---

Thomas C. Horne, 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 Terry Reid, Deputy Public Defender  
Attorneys for Appellant

---

J O H N S E N, Judge

¶1 This appeal was timely filed in accordance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), following Alberto Saucedo's

convictions of two counts of armed robbery, Class 2 dangerous felonies; and two counts of aggravated assault, which the judgment incorrectly designated as Class 2 dangerous felonies. Ariz. Rev. Stat. ("A.R.S.") § 13-1904 (West 2013), -1204 (Supp. 2001).<sup>1</sup> Saucedo's counsel has searched the record on appeal and found no arguable question of law that is not frivolous. See *Smith v. Robbins*, 528 U.S. 259 (2000); *Anders*, 386 U.S. 738; *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999). Saucedo was given the opportunity to file a supplemental brief but did not do so. Counsel now asks this court to search the record for fundamental error. After reviewing the entire record, we amend the judgment to reflect that Saucedo's two convictions for aggravated assault are Class 3 dangerous felonies and otherwise affirm his convictions and sentences.

#### FACTS AND PROCEDURAL HISTORY

¶12 On July 22, 2001, Saucedo agreed to drive his brother, Pedro Saucedo ("Pedro"), and cousin, Santos Comacho ("Santos"), to a market in Maricopa County in Saucedo's red Ford F-150 pickup truck.<sup>2</sup> On the way there, Pedro told Saucedo that he planned to rob the market. Saucedo gave Pedro his .357 magnum;

---

<sup>1</sup> Absent material revisions after the date of an alleged offense, we cite a statute's current version.

<sup>2</sup> Upon review, we view the facts in the light most favorable to sustaining the jury's verdicts and resolve all inferences against Saucedo. *State v. Fontes*, 195 Ariz. 229, 230, ¶ 2, 986 P.2d 897, 898 (App. 1998).

Santos had a fake gun. Saucedo waited in his truck while his brother and cousin entered the market.

¶13 In the market, Pedro and Santos went to the beer cooler and selected a 30-pack of beer. S.G., the son of the shop owner, stood at the cash register, while the owner of the shop, R.G., stood to one side. Pedro and Santos pulled out the guns from under their shirts and pointed them at S.G. Either Pedro or Santos then pointed his gun at R.G. After the men demanded money, S.G. gave them approximately \$600 from the cash register and several thousand dollars in a bank bag from under the counter. Pedro and Santos then ordered S.G. to the ground. After S.G. heard the two leave, S.G. and R.G. went outside and saw a red pickup truck drive away. Back at Saucedo's house, the three split the money. Years later, a tip led police to Saucedo, who confessed his involvement in the crime.

¶14 In a single indictment, Saucedo and Pedro each was charged with one count of armed robbery and one count of aggravated assault against R.G., and one count of armed robbery and one count of aggravated assault against S.G. The jury convicted Saucedo on all four counts and found the offenses to be dangerous. The court sentenced Saucedo to four concurrent terms of seven years.

¶15 Saucedo timely appealed. We have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution, and A.R.S.

§§ 12-120.21(A)(1) (West 2013), 13-4031 (West 2013) and -  
4033(A)(1) (West 2013).

#### DISCUSSION

¶16 The record reflects Saucedo received a fair trial. He was represented by counsel and was present at all critical stages of the proceedings. The court did not conduct a voluntariness hearing, but the record did not raise a question about the voluntariness of Saucedo's statements to police. See *State v. Smith*, 114 Ariz. 415, 419, 561 P.2d 739, 743 (1977); *State v. Finn*, 111 Ariz. 271, 275, 528 P.2d 615, 619 (1974).

¶17 The State presented both direct and circumstantial evidence sufficient to allow the jury to convict. The jury was properly comprised of twelve members with two alternates. The court properly instructed the jury on the elements of the charges, the State's burden of proof and the necessity of a unanimous verdict. The jury returned unanimous verdicts confirmed by juror polling and made separate dangerous findings on each count. The court received and reviewed a presentence report and did not deprive Saucedo of any pre-sentence incarceration credit to which he was entitled by law.

¶18 Our review of the record, however, discloses that, apparently in reliance on an error in the caption of the indictment, when the court imposed judgment and sentenced Saucedo, it erroneously designated his two aggravated assault

convictions as Class 2 felonies. Under the circumstances presented here, aggravated assault is a Class 3 felony when, as here, it involves use of a deadly weapon and the victim is an adult. A.R.S. § 13-1204(B) (Supp. 2001). We therefore modify the judgment to provide that Saucedo's aggravated assault convictions (Counts 3 and 4) are Class 3 felonies rather than Class 2 felonies.

¶19 The mischaracterization of the convictions did not cause the court to impose illegal sentences for the two aggravated assault offenses. At the relevant time, the range of legal sentences for a first conviction of a Class 2 dangerous felony was seven to 21 years, with a presumptive sentence of 10.5 years; the range of sentences for the first conviction of a Class 3 dangerous felony was five to 15 years, with a presumptive sentence of 7.5 years. A.R.S. § 13-604(I) (Supp. 2001). The seven-year sentences the court imposed were well within the legal range for a Class 3 dangerous felony.

¶10 It is not clear from the record, however, that the court would have imposed the same sentences for the two aggravated assault convictions if it had understood that the crimes were Class 3 felonies rather than Class 2 felonies. At sentencing, the court heard evidence of mitigation; the victim testified, urging the court to impose a mitigated sentence. At the conclusion of the evidence, the court announced that it

"does find the mitigated sentence to be appropriate." Although the seven-year term the court imposed on each of the two aggravated assault convictions was the minimum sentence allowed for a Class 2 dangerous felony, it would have been only a slightly mitigated sentence for a Class 3 dangerous felony. Given that the court imposed the shortest sentence it apparently believed was authorized for the two aggravated assault convictions, we might presume that, if it had understood the aggravated assault offenses were Class 3 felonies, it would have imposed sentences shorter than seven years.

¶11 Because Saucedo failed to object to the erroneous designation of the two convictions, however, we will not vacate and remand for resentencing without a showing of prejudice. See *State v. Henderson*, 210 Ariz. 561, 567, ¶ 20, 115 P.3d 601, 607 (2005). Given that the superior court in this case also imposed legal seven-year mitigated terms for the two armed robbery convictions and ordered that all four sentences be served concurrently, we cannot conclude that Saucedo was prejudiced by the error. We therefore amend the judgment to reflect that counts 3 and 4 are Class 3 felonies, but affirm Saucedo's convictions and sentences in all other regards.

#### CONCLUSION

¶12 We have reviewed the entire record for reversible error and find none. See *Leon*, 104 Ariz. at 300, 451 P.2d at 881.

¶13 After the filing of this decision, defense counsel's obligations pertaining to Saucedo's representation in this appeal have ended. Defense counsel need do no more than inform Saucedo 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. See *State v. Shattuck*, 140 Ariz. 582, 585, 684 P.2d 154, 157 (1984). On the court's own motion, Saucedo has 30 days from the date of this decision to proceed, if he wishes, with a *pro per* motion for reconsideration. Saucedo has 30 days from the date of this decision to proceed, if he wishes, with a *pro per* petition for review.

/s/

\_\_\_\_\_  
DIANE M. JOHNSEN, Judge

CONCURRING:

/s/

\_\_\_\_\_  
PATRICIA K. NORRIS, Presiding Judge

/s/

\_\_\_\_\_  
JON W. THOMPSON, Judge