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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: 7/30/2013
RUTH A. WILLINGHAM,
CLERK
BY: mjt

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) No. 1 CA-CR 12-0228
)
Appellee,) DEPARTMENT D
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
KENNETH SCOTT JOHNSON,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. CR2011-007271-001

The Honorable Dawn M. Bergin, Judge

AFFIRMED

Thomas C. Horne, Arizona Attorney General Phoenix
By Joseph T. Maziarz, Chief Counsel
Criminal Appeals/Capital Litigation Section
Attorneys for Appellee

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By Ronald M. DeBrigida, Jr.
Attorneys for Appellant

Kenneth Scott Johnson Florence
Appellant

D O W N I E, Judge

¶1 Kenneth Scott Johnson timely appeals his conviction for child molestation in violation of Arizona Revised Statutes ("A.R.S.") section 13-1410. Pursuant to *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), defense counsel has searched the record, found no arguable question of law, and asked that we review the record for fundamental error. See *State v. Richardson*, 175 Ariz. 336, 339, 857 P.2d 388, 391 (App. 1993). Defendant filed a supplemental brief *in propria persona*. On appeal, we view the evidence in the light most favorable to sustaining the conviction. *State v. Tison*, 129 Ariz. 546, 552, 633 P.2d 355, 361 (1981), *cert. denied*, 459 U.S. 882 (1982).

FACTS AND PROCEDURAL HISTORY

¶2 In November 1995, a 12-year-old girl ("the victim") spent the night with a friend. Johnson was staying in the home while the friend's mother was out of town. During the night, the victim awakened to someone touching the top of her vaginal area over her sleepwear with his hand and fingers. She saw the silhouette of a man standing over her, smoking a cigarette, and she recognized the man as Johnson. He ran from the room when the victim rolled over.

¶3 The victim went to the living room to call her father. She told Johnson she had a headache, and he offered to massage

her head. Johnson sat on the couch with the victim "between his legs" and massaged her head. The victim then called her father, and her parents called the police.

¶4 Johnson was charged with one count of child molestation regarding the victim.¹ The State moved to admit evidence of two separate uncharged events ("Apache Junction allegations" and "Seattle allegations") to prove motive, intent, identity or absence of mistake, and to demonstrate that Johnson had a character trait giving rise to an aberrant sexual propensity to commit the charged offense. See Ariz. R. Evid. 404(b), (c). After an evidentiary hearing, the court granted the motion, subject to certain limitations set forth in its minute entry ruling.

¶5 A jury trial ensued. The court denied Johnson's motions for judgment of acquittal pursuant to Rule 20, Arizona Rules of Criminal Procedure ("Rule"), made at the close of the State's case-in-chief and after the State's rebuttal evidence. The jury found Johnson guilty. He was sentenced to a slightly mitigated flat term of 15 years in prison and given 331 days' pre-sentence incarceration credit.

¹ A second count was filed regarding a different victim, but it is not at issue on appeal, so we do not address it.

DISCUSSION

¶16 We have read and considered the briefs submitted and have reviewed the entire record. *Leon*, 104 Ariz. at 300, 451 P.2d at 881. We find no fundamental error. All of the proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure, and the sentence imposed was within the statutory range. Johnson was present at all critical phases of the proceedings and was represented by counsel. The jury was properly impaneled and instructed. The jury instructions were consistent with the offense charged. The record reflects no irregularity in the deliberation process.

¶17 Johnson has submitted a letter listing 28 "items," many of which are extremely general (e.g., "All testimony was hearsay;" and "Never any evidence presented"). Although we do not individually address each item, we have reviewed the topics enumerated by Johnson and have found no fundamental error.

¶18 Molestation of a child occurs when a person intentionally or knowingly engages in sexual conduct, except sexual contact with the female breast, with a child under 15 years of age. A.R.S. § 13-1410(A). The State presented substantial evidence that Johnson molested the victim, who was under 15 years of age. The trial court thus properly denied the Rule 20 motions. See Rule 20 (judgment of acquittal is appropriate only when there is "no substantial evidence to

warrant a conviction"); see also *State v. Mathers*, 165 Ariz. 64, 67, 796 P.2d 866, 869 (1990) (substantial evidence is such proof that "reasonable persons could accept as adequate and sufficient to support a conclusion of defendant's guilt beyond a reasonable doubt") (internal quotation marks omitted), *State v. Soto-Fong*, 187 Ariz. 186, 200, 928 P.2d 610, 624 (1996) ("Reversible error based on insufficiency of the evidence occurs only where there is a complete absence of probative facts to support the conviction.").

¶19 The jury heard videotaped testimony by C.T. regarding the Seattle allegations. C.T. stated that Johnson and her mother were romantically involved, and the three of them lived together. Beginning when C.T. was six or seven, Johnson would go into her room at night and touch her "inappropriately." C.T. said Johnson touched her breasts and vagina, touched his penis to her vagina, used his finger to penetrate her vagina, put his mouth on her breasts and vagina, and on one occasion, tried to penetrate her with his penis while she was sleeping.

¶10 V.B. testified about the Apache Junction allegations, which occurred when Johnson lived with her mother. She stated that Johnson put his hand in her pants and rubbed her vagina when she was nine or ten.

¶11 The victim testified that Johnson used his hands and fingers to touch her over her clothing at the "top of [her]

vagina where [her] clitoris is." An expert witness testified about children's reactions to sexual abuse, and a pediatrician specializing in child abuse explained female genitalia to the jury and stated that certain physical sensations the victim had described could be caused by pressure over the bladder or rubbing the urethra, which is "a very sensitive structure in little girls."

¶12 Johnson testified in his own defense, stating that he went to check on the girls, but the bedroom was dark so he could not tell whether they were in bed; he thus "felt around on the bed" for them. He reportedly tried to cover the girls with a blanket, but they were lying on it. With a cigarette hanging out of his mouth, Johnson used his hands to "reach over the top" of the girls and "kind of jockey the blanket back and forth." When the victim began to wake up, Johnson left the room. Johnson denied trying to touch the victim in any particular place or touching her in a "sexual way." He admitted rubbing her neck when she complained of a headache, but denied having her sit between his legs.

¶13 "No rule is better established than that the credibility of the witnesses and the weight and value to be given to their testimony are questions exclusively for the jury." *State v. Clemons*, 110 Ariz. 555, 556-57, 521 P.2d 987, 988-89 (1974); see also *State v. Lehr*, 201 Ariz. 509, 517, ¶ 24,

38 P.3d 1172, 1180 (2002). The jury obviously found the State's evidence credible and disbelieved Johnson's version of events. We do not reweigh the evidence on appeal to determine whether we would reach the same conclusion as the jury. See *State v. Guerra*, 161 Ariz. 289, 293, 778 P.2d 1185, 1189 (1989). We consider whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *State v. Montano*, 204 Ariz. 413, 423, ¶ 43, 65 P.3d 61, 71 (2003); *State v. Sullivan*, 187 Ariz. 599, 603, 931 P.2d 1109, 1113 (App. 1996). Based on our review of the record, we conclude that reasonable jurors could have found Johnson guilty of the charged offense.

CONCLUSION

¶14 We affirm Johnson's conviction and sentence. Counsel's obligations pertaining to Johnson's representation in this appeal have ended. Counsel need do nothing more than inform Johnson 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). On the court's own motion, Johnson shall have 30 days from the date of this decision to proceed, if he desires,

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

/s/
MARGARET H. DOWNIE, Judge

CONCURRING:

/s/
ANDREW W. GOULD, Presiding Judge

/s/
PATRICIA A. OROZCO, Judge