

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Appellee*,

v.

ADRIAN JOHNNY BENITEZ, *Appellant*.

No. 1 CA-CR 16-0442
FILED 7-11-2017

Appeal from the Superior Court in Maricopa County
No. CR2015-002622-001
The Honorable Michael W. Kemp, Judge

AFFIRMED

COUNSEL

Arizona Attorney General's Office, Phoenix
By Joseph T. Maziarz
Counsel for Appellee

Corso Law Group, Scottsdale
By James Hankey
Counsel for Appellant

Adrian Johnny Benitez, Tucson
Appellant

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MEMORANDUM DECISION

Presiding Judge Samuel A. Thumma delivered the decision of the Court, in which Judge Lawrence F. Winthrop and Judge James P. Beene joined.

T H U M M A, Judge:

¶1 This is an appeal under *Anders v. California*, 386 U.S. 738 (1967) and *State v. Leon*, 104 Ariz. 297 (1969). Counsel for defendant Adrian Johnny Benitez has advised the court that, after searching the entire record, he has found no arguable question of law and asks this court to conduct an *Anders* review of the record. Benitez was given the opportunity to file a supplemental brief pro se, and has done so. This court has reviewed the record and has found no reversible error. Accordingly, Benitez' convictions and resulting sentences are affirmed.

FACTS¹ AND PROCEDURAL HISTORY

¶2 One June 2015 day in Phoenix, J.C. was driving her car with her fiancé C.G. and two-month-old baby A.G.² Benitez was driving in the other lane and flipped J.C. off. After J.C. returned the gesture, Benitez pulled alongside her and displayed a handgun. He waved the gun between J.C. and C.G. then pulled in front of J.C., stopped abruptly and began to get out of his vehicle. J.C. took a cell phone picture of Benitez and his license plate before driving away, passing him on the left side. Shortly after she drove past Benitez, J.C. heard two loud noises that she thought were gunshots. Benitez then caught up to J.C. at a traffic light where he pointed and waved the gun at her again. J.C. turned left and Benitez continued straight.

¶3 J.C. called the police. The responding officer ran the license plate from J.C.'s cell phone picture and found the car was registered to Benitez. The officer created a six-photograph photo lineup, which included

¹ This court views the facts "in the light most favorable to sustaining the verdict, and resolve[s] all reasonable inferences against the defendant." *State v. Rienhardt*, 190 Ariz. 579, 588-89 (1997) (citation omitted).

² Initials are used to protect the identity of the victim and witnesses. See *State v. Maldonado*, 206 Ariz. 339, 341 ¶ 2 n.1 (App. 2003).

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a driver's license photo of Benitez. Both J.C. and C.G. independently identified Benitez as the man who threatened them with a handgun. A file stop was placed on Benitez' vehicle.

¶4 About a month later, Benitez was pulled over by another officer, who searched Benitez' car but found no weapon. Benitez admitted to remembering the altercation but denied pointing a gun at anyone. The state charged Benitez with two counts of drive by shooting, Class 2 dangerous felonies (Counts 1 and 2); two counts of aggravated assault with a dangerous instrument, Class 3 dangerous felonies (Counts 3 and 4); and one count of endangerment, a Class 6 dangerous felony (Count 5).

¶5 At trial, the State called as witnesses J.C., C.G., the responding officer and the officer who searched Benitez. After the State rested, Benitez unsuccessfully moved for a judgment of acquittal based on inconsistencies in the evidence. *See* Ariz. R. Crim. P. 20 (2017).³ Benitez elected not to testify in his own defense, which is his right. He did, however, call as a witness his girlfriend who was in the car with him at the time of the incident. After deliberation, the jury found Benitez not guilty of the drive by shooting charges but guilty of the remaining three charges. Following an aggravation proceeding, for the two aggravated assault conviction, the jury found the State proved the offenses (1) involved the infliction or threatened infliction of serious physical injury and (2) caused physical, emotional or financial harm to the victim. For the endangerment conviction, the jury found the State proved the offense involved (1) the infliction or threatened infliction of serious physical injury and (2) the use, threatened use or possession of a deadly weapon or dangerous instrument.

¶6 At sentencing, after considering the aggravating and mitigating circumstances, the superior court sentenced Benitez to concurrent, presumptive prison terms of 7.5 years for the aggravated assault convictions and 1.5 years for the endangerment conviction, and properly gave Benitez 51 days of presentence incarceration credit. This court has jurisdiction over Benitez' timely appeal pursuant to Article 6, Section 9, of the Arizona Constitution and A.R.S. §§ 13-120.21(A)(1), 13-4031 and 13-4033(A).

³ Absent material revisions after the relevant dates, statutes and rules cited refer to the current version unless otherwise indicated.

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DISCUSSION

¶7 This court has reviewed and considered counsel’s brief and appellant’s pro se supplemental brief, and has searched the entire record for reversible error. *See State v. Clark*, 196 Ariz. 530, 537 ¶ 30 (App. 1999). Searching the record and briefs reveals no reversible error. The record shows Benitez was represented by counsel at all stages of the proceedings and that counsel was present at all critical stages. The evidence admitted at trial constitutes substantial evidence supporting Benitez’ convictions. From the record, all proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure. The sentences imposed are within the statutory limits and permissible ranges.⁴

¶8 In his pro se brief, Benitez argues statements by various witnesses changed over time, there was insufficient evidence to show that he committed the offenses and no gun or bullet casings were recovered. This court will not reverse a conviction for insufficiency of the evidence unless there is no substantial evidence to support the jury’s verdict. *See State v. Scott*, 187 Ariz. 474, 477 (App. 1996). Here, the victims identified Benitez as the individual who threatened them both in a photo lineup and in the courtroom. Moreover, the State presented the victim’s photos of Benitez and his license plate to the jury. On this record, there is substantial evidence to support the jury’s verdicts. *See id.*

¶9 Benitez also argues that inconsistent testimony undermines his convictions. “[I]nconsistencies in witness testimony go not to the admissibility of testimony, but rather to the credibility of the witnesses and the weight to be accorded to the evidence, which are issues for the jury to resolve.” *State v. Rivera*, 210 Ariz. 188, 192 ¶ 20 (2005). Here, Benitez’ counsel noted the inconsistencies during closing arguments. The jury then resolved any inconsistencies, as was its prerogative, *see id.*, yet found Benitez guilty on three charges. Benitez has shown no error on this basis.⁵

⁴ Although the 1.5 year prison term for endangerment, a Class 6 dangerous non-repetitive offense, was characterized as a presumptive term, a 2.25 year prison term is the presumptive term for such an offense. *See* A.R.S. § 13-704(A). A 1.5 year term for such an offense is, however, within the statutory limit and permissible range. *Id.*

⁵ Although Benitez also asks for “a copy of all records on appeal,” including “digital recordings of the trial,” he has made no showing that he did not

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CONCLUSION

¶10 This court has read and considered counsel's brief and Benitez' pro se supplemental brief, and has searched the record provided for reversible error and has found none. *State v. Leon*, 104 Ariz. 297, 300 (1969); *State v. Clark*, 196 Ariz. 530, 537 ¶ 30 (App. 1999). Accordingly, Benitez' convictions and resulting sentences are affirmed.

¶11 Upon the filing of this decision, defense counsel is directed to inform Benitez of the status of his appeal and of his future options. Defense counsel has no further obligations unless, upon review, counsel identifies an issue appropriate for submission to the Arizona Supreme Court by petition for review. *See State v. Shattuck*, 140 Ariz. 582, 584-85 (1984). Benitez shall have 30 days from the date of this decision to proceed, if he desires, with a pro se motion for reconsideration or petition for review.



AMY M. WOOD • Clerk of the Court
FILED: AA

receive records he was entitled to receive from his attorney or that he has a right to be provided such material from this court.