

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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.

JAMES THOMAS ALLEN, *Appellant*.

No. 1 CA-CR 16-0778
FILED 12-12-2017

Appeal from the Superior Court in Mohave County
No. S8015CR201501454
The Honorable Lee Frank Jantzen, Judge

AFFIRMED

COUNSEL

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

Mohave County Legal Advocate, Kingman
By Jill L. Evans
Counsel for Appellant

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MEMORANDUM DECISION

Judge Peter B. Swann delivered the decision of the court, in which Presiding Judge Randall M. Howe and Judge Maria Elena Cruz joined.

S W A N N, Judge:

¶1 This is an appeal under *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297 (1969), from James Thomas Allen’s conviction for domestic-violence assault and the court’s imposition of probation. Neither Allen nor his counsel identify any issues for appeal. We have reviewed the record for fundamental error. See *Smith v. Robbins*, 528 U.S. 259 (2000); *Anders*, 386 U.S. 738; *State v. Clark*, 196 Ariz. 530, 537, ¶ 30 (App. 1999). We find none.

¶2 A grand jury indicted Allen for domestic-violence aggravated assault, Allen pled not guilty and waived his right to a jury trial, and the matter proceeded to a bench trial. At trial, the state presented evidence of the following facts. On the evening of November 25, 2015, after Allen’s live-in girlfriend, N.C., returned home from work, Allen began yelling, cursing, throwing beer cans, and playing music at a very high volume. N.C., holding but not brandishing a chef’s knife that she had recently started carrying because she was afraid of Allen, asked Allen to stop and to clean up the beer cans. Allen responded: “Shut up, bitch,” and “Life with [N.C.], life in prison.” He then tackled N.C. and wrestled with her on the floor, putting his hands on her throat and covering her mouth. N.C. bit Allen’s sleeve and he released her. Allen then forcefully threw the chef’s knife at N.C. The knife went over N.C.’s shoulder and she ran out the front door as Allen told her to never return.

¶3 N.C. drove away from the home and contacted a person who called the police. The responding officer observed that N.C. had several injuries: a bleeding cut on her finger, a scratch on her face, a mark on her chest, and an abrasion on her knee. After speaking with N.C., the officer went to the home and spoke with Allen. The officer observed that Allen appeared to be intoxicated – his eyes were red and watery, and his breath smelled of alcohol. Allen told the officer that he had made the “Life with [N.C.], life in prison” statement but had not attacked N.C. Allen instead claimed that N.C. had attacked him with a knife for no reason and had cut his hand. The officer looked at Allen’s hand and saw dry blood but no cut.

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The officer also saw dry blood on the outside handle of the home's front door.

¶4 The court found Allen guilty of the lesser offense of domestic-violence assault, a class one misdemeanor. The court placed Allen on unsupervised probation for one year, with thirty days of jail time and credit for presentence incarceration.¹

¶5 We find no fundamental error. Allen was present and represented at all stages, and he knowingly, intelligently, and voluntarily waived trial by jury. At trial, the state presented sufficient evidence to support Allen's conviction for assault under A.R.S. § 13-1203(A)(1), which requires that the defendant intentionally, knowingly, or recklessly caused physical injury to another person. The state also presented sufficient evidence to show that the assault was a domestic-violence offense under A.R.S. § 13-3601(A)(1) based on Allen and N.C.'s cohabitation. Further, the court imposed probation consistent with A.R.S. § 13-902.

¶6 We therefore affirm. Defense counsel's obligations pertaining to this appeal have come to an end. *See State v. Shattuck*, 140 Ariz. 582, 584-85 (1984). Unless, upon review, counsel discovers an issue appropriate for petition for review to the Arizona Supreme Court, counsel must only inform Allen of the status of this appeal and his future options. *Id.* Allen has 30 days from the date of this decision to file a petition for review *in propria persona*. *See* Ariz. R. Crim. P. 31.19(a). Upon the court's own motion, Allen has 30 days from the date of this decision in which to file a motion for reconsideration.



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

¹ Allen has since been discharged from probation, but we decline to dismiss his appeal as moot.