

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

ROLANDO EFRAIN MARTINEZ CEBALLOS, *Appellant*.

No. 1 CA-CR 16-0283
FILED 4-26-2018

Appeal from the Superior Court in Maricopa County
No. CR2013-440955-001
The Honorable John Rea, Judge

AFFIRMED

COUNSEL

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

Nicole Farnum, Phoenix
Counsel for Appellant

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MEMORANDUM DECISION

Judge Jennifer M. Perkins delivered the decision of the Court, in which Presiding Judge Kenton D. Jones and Judge Jon W. Thompson joined.

P E R K I N S, Judge:

¶1 Rolando Martinez Ceballos appeals his convictions and sentences for two counts of child molestation. After searching the entire record, Martinez Ceballos’s defense counsel identified no arguable, non-frivolous, question of law. Therefore, in accordance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297 (1969), defense counsel asked this Court to search the record for fundamental error. Martinez Ceballos was granted an opportunity to file a supplemental brief *in propria persona* and did not do so. After reviewing the entire record, we find no error. Accordingly, we affirm Martinez Ceballos’s convictions and sentences.

FACTS AND PROCEDURAL HISTORY

¶2 Martinez Ceballos was charged with molesting Victim, a minor, on three separate occasions, once in 2011 and twice in 2013. The jury found Martinez Ceballos not guilty on charges related to the third incident and we do not discuss the charge further. On the first occasion, Victim, then age ten, was in the bathroom of the home she shared with Defendant when Defendant entered the bathroom. Defendant placed Victim on the bathroom counter and proceeded to touch her genitals over her clothes. Victim began yelling and hitting Martinez Ceballos with a broom. Victim’s brother attempted to open the door, which Defendant held shut. After a few moments, Defendant and Victim left the bathroom separately.

¶3 On the second occasion, in May of 2013, Victim, then age twelve, was seated at the kitchen table when Defendant approached her from behind and hugged her. Defendant then touched Victim’s genitals over her clothes. Victim’s mother witnessed this incident, asked what Defendant was doing, and Defendant let go of Victim.

¶4 The jury convicted Martinez Ceballos of two counts of child molestation under Arizona Revised Statutes (“A.R.S.”) section 13-1410 (2018). The jury found three aggravating factors for each count. The trial

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court sentenced Martinez Ceballos to presumptive concurrent terms of seventeen years in the Department of Corrections for count one and count two. The trial court credited him with 967 days presentence incarceration.

DISCUSSION

¶5 On appeal, we take the facts from the record at trial and view those facts in the light most favorable to sustaining the convictions. *State v. Harm*, 236 Ariz. 402, 404 n.2 (App. 2015). Our review reveals no fundamental error. *See Leon*, 104 Ariz. at 300 (“An exhaustive search of the record has failed to produce any prejudicial error.”). A person is guilty of child molestation if they “intentionally or knowingly engag[e] in or caus[e] a person to engage in sexual contact . . . with a child who is under fifteen years of age.” A.R.S. § 13-1410(A). A review of the record shows it contains sufficient evidence upon which the jury could determine beyond a reasonable doubt that Martinez Ceballos is guilty of the charged offenses.

¶6 All the proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure. The record indicates Martinez Ceballos was represented by counsel at all stages of the proceedings and was present at all critical stages including the entire trial and the verdict. *See State v. Conner*, 163 Ariz. 97, 104 (1990) (right to counsel at critical stages); *State v. Bohm*, 116 Ariz. 500, 503 (1977) (right to be present at critical stages). The jury was properly comprised of twelve jurors, and the record shows no evidence of jury misconduct. *See* A.R.S. § 21-102; Ariz. R. Crim. P. 18.1(a). The trial court properly instructed the jury on the elements of the charged offenses, the State’s burden of proof, and Martinez Ceballos’s presumption of innocence. At sentencing, Martinez Ceballos had the opportunity to speak. Additionally, the court stated on the record the evidence and materials it considered and factors it found in imposing the sentences. *See* Ariz. R. Crim. P. 26.9, 26.10. The sentences imposed were within the statutory limits. *See* A.R.S. §§ 13-701 through -709.

CONCLUSION

¶7 Martinez Ceballos’s convictions and sentences are affirmed.

¶8 Defense counsel’s obligations pertaining to Martinez Ceballos’s representation in this appeal are complete. Defense counsel need do no more than inform Martinez Ceballos of the outcome of this appeal and his future options, unless, upon review, counsel finds an issue appropriate for submission to our supreme court by petition for review. *State v. Shattuck*, 140 Ariz. 582, 584–85 (1984).

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¶9 Martinez Ceballos has thirty days from the date of this decision to proceed, if he wishes, with an *in propria persona* petition for review. See Ariz. R. Crim. P. 31.19(a). Upon the Court's own motion, we also grant Martinez Ceballos thirty days from the date of this decision to file an *in propria persona* motion for reconsideration.



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