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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

JONATHAN CASAS-CRUZ, *Appellant*.

No. 1 CA-CR 17-0341
FILED 8-23-2018

Appeal from the Superior Court in Maricopa County
No. CR2016-001261-001
The Honorable Danielle J. Viola, Judge

AFFIRMED

COUNSEL

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

Bain & Lauritano, Glendale
By Amy E. Bain
Counsel for Appellant

Jonathan Casas-Cruz, Florence
Appellant

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MEMORANDUM DECISION

Judge Peter B. Swann delivered the decision of the court, in which Presiding Judge Jon W. Thompson and Judge James P. Beene 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 Jonathan Casas-Cruz's convictions and sentences for aggravated assault and sexual conduct with a minor. We have considered the issues raised by Casas-Cruz's *pro per* filings, and we have searched 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 affirm.

¶2 Casas-Cruz was indicted for, as relevant here, three counts of sexual conduct with a minor and one count of aggravated assault related to Victim A, and two counts of sexual conduct with a minor related to Victim B.¹ He pled not guilty and waived his right to a jury trial.

¶3 At the bench trial, the state presented evidence of the following facts. Victims A and B are young cousins and Casas-Cruz is their adult uncle. Casas-Cruz and his female partner provided at least occasional childcare for the victims.

¶4 Victim A, who was eleven years old at the time of trial, experienced the following interactions with Casas-Cruz. On more than one occasion, Casas-Cruz separated Victim A from other children in his home, took her to his bedroom, removed her pants and underwear, and placed his finger "in [her] butt." Another time, in his bedroom, he inserted "his private thing where he goes to the bathroom with in [her] butt." In the bedroom, Casas-Cruz would use a television to monitor his home's security cameras; he also instructed Victim A at least once not to tell anyone. On another occasion, Casas-Cruz removed Victim A's pants and underwear in his living room and turned the television to a channel depicting women "making out." He then placed his finger "in [her] butt" and used a window to monitor his surroundings. On another occasion, during a child's

¹ An additional count of aggravated assault was dismissed at trial on the state's motion.

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birthday party, Casas-Cruz approached Victim A in a bouncy house. He told other children to exit the bouncy house but directed her to stay. He then “started touching [her] butt” over clothing and tried to kiss her.

¶5 Victim B, who was ten years old at the time of trial, was subjected to the following. On several occasions, Casas-Cruz separated Victim B from other children in his home, took her to his bedroom or living room, pulled her pants down, placed a pillow on her stomach, and inserted “where he pee[s]” in “where [she] pee[s].” On other occasions, he “lick[ed]” the area “where [she] pee[s].” Like Victim A, Victim B testified that Casas-Cruz instructed her not to disclose what happened and that he would monitor the security cameras during interactions in his bedroom.

¶6 The victims informed their families of Casas-Cruz’s actions soon after the bouncy-house incident. None of the victims’ parents had previously suspected Casas-Cruz of inappropriate behavior, though Victim A’s de facto father noted that she sometimes would not want to use the bathroom after returning from Casas-Cruz’s home and Victim B’s mother observed that she would resist going to Casas-Cruz’s home and would often complain that “her private parts hurt.” A blind expert testified at trial that delayed disclosure is common in sexual abuse cases, and that many victims show no outward signs of abuse.

¶7 The victims participated in forensic interviews and made disclosures. Law enforcement facilitated confrontation calls to Casas-Cruz and interviewed him twice, but he made no admissions.

¶8 Casas-Cruz testified on his own behalf. He categorically denied the victims’ accounts. He, his de facto wife, and his mother-in-law testified to historical family tensions, especially between Casas-Cruz and Victim A’s mother.

¶9 The court denied Casas-Cruz’s motion for a judgment of acquittal under Ariz. R. Crim. P. (“Rule”) 20. The court found Casas-Cruz guilty of aggravated assault and the five counts of sexual conduct with a minor; the court further found that Casas-Cruz was more than eighteen years old when he committed the offenses and the victims were less than twelve years old. The court sentenced Casas-Cruz to consecutive presumptive prison terms of one year for the aggravated assault and life for each instance of sexual conduct with a minor.

¶10 We discern three categories of arguments in Casas-Cruz’s *proper* appellate filings. First, he contends that he should have been afforded a preliminary hearing. But because he was charged by indictment, he had

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no right to a preliminary hearing. *See State v. Meeker*, 143 Ariz. 256, 265 (1984); *see also* Ariz. Const. art. 2, § 30.

¶11 Next, Casas-Cruz contends that the evidence did not support his convictions. We review the sufficiency of the evidence by viewing the evidence in the light most favorable to upholding the verdicts. *State v. Cox*, 217 Ariz. 353, 357, ¶ 22 (2007). We do not reweigh the evidence or determine the credibility of witnesses, *State v. Williams*, 209 Ariz. 228, 231, ¶ 6 (App. 2004), and we will reverse only if “there is a complete absence of probative facts to support the conviction,” *State v. Scott*, 113 Ariz. 423, 424-25 (1976). Sufficient evidence may be either direct or circumstantial, and may support differing reasonable inferences. *State v. Anaya*, 165 Ariz. 535, 543 (App. 1990).

¶12 We conclude that the state presented sufficient evidence to support Casas-Cruz’s convictions. As an initial matter, and as relevant to each of the offenses, the evidence established that at all relevant times Casas-Cruz was more than eighteen years old and the victims were under twelve years old.

¶13 For the aggravated assault charge, the state was further required to prove that Casas-Cruz knowingly touched Victim A with the intent to injure, insult, or provoke her. *See A.R.S. §§ 13-1203(A)(3), -1204(A)(6)*. The state’s evidence regarding Casas-Cruz’s conduct in the bouncy house satisfied that burden of proof.

¶14 For the charges of sexual conduct with a minor related to Victim A, the state was required to prove that Casas-Cruz intentionally or knowingly penetrated Victim A’s vulva or anus with a part of his body or an object. A.R.S. §§ 13-1405, -1401(A)(4). Consistent with the charging document, the state presented evidence that Casas-Cruz isolated Victim A, removed her pants and underwear, and, while maintaining a lookout for others, penetrated her “butt” with his finger or “his private thing where he goes to the bathroom with” on at least three occasions.

¶15 For the charges of sexual conduct with a minor related to Victim B, the state alleged under A.R.S. §§ 13-1405 and -1401(A)(1) that Casas-Cruz intentionally or knowingly penetrated Victim B’s vulva or anus with a part of his body or an object in his bedroom, and intentionally or knowingly had oral contact with Victim B’s vulva or anus in his bedroom. The state presented evidence that Casas-Cruz isolated Victim B in his bedroom and, while monitoring the security cameras, pulled her pants down, placed a pillow on her stomach, and inserted “where he pee[s]” in

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“where [she] pee[s].” The state further presented evidence that Casas-Cruz “lick[ed]” the area “where [she] pee[s]” in his bedroom. All witness credibility issues were for the trial judge to resolve.

¶16 Casas-Cruz contends that the trial judge was biased. A “trial judge is presumed to be free of bias and prejudice,” and “[t]o rebut this presumption, a party must set forth a specific basis for the claim of partiality and prove by a preponderance of the evidence that the judge is biased or prejudiced.” *State v. Medina*, 193 Ariz. 504, 510, ¶ 11 (1999) (citation omitted). Casas-Cruz has identified no grounds for his general allegation of bias. Moreover, our independent review of the record shows no evidence of judicial bias or prejudice at any point in the proceedings.

¶17 Nor does our independent review of the record reveal any other fundamental error. Casas-Cruz was present and represented at all critical stages. The prosecutor’s arguments were proper. The court was provided proper legal instructions. The court imposed legal sentences and correctly credited Casas-Cruz for his presentence incarceration. *See A.R.S. §§ 13-1204(E), -702(D), -1405(B), -705(B), (O), (Q)(1)(e), -712(B).*

¶18 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 Casas-Cruz of the status of this appeal and his future options. *Id.* Casas-Cruz has 30 days from the date of this decision to file a petition for review *in propria persona*. *See Rule 31.21(b)(2)(A).* Upon the court’s own motion, Casas-Cruz has 30 days from the date of this decision in which to file a motion for reconsideration. *See Rule 31.20(c).*



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