

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

MARIO GIBBONS, *Appellant*.

No. 1 CA-CR 17-0401
FILED 10-23-2018

Appeal from the Superior Court in Maricopa County
No. CR2014-123632-001
The Honorable Margaret R. Mahoney, Judge

AFFIRMED

COUNSEL

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

Michael J. Dew Attorney at Law, Phoenix
By Michael J. Dew
Counsel for Appellant

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MEMORANDUM DECISION

Presiding Judge Randall M. Howe delivered the decision of the Court, in which Judge Kenton D. Jones and Judge James B. Morse Jr. joined.

H O W E, Judge:

¶1 This appeal is filed in accordance with *Anders v. California*, 386 U.S. 738 (1967) and *State v. Leon*, 104 Ariz. 297 (1969). Counsel for Mario Gibbons has advised this Court that counsel found no arguable questions of law and asks us to search the record for fundamental error. Gibbons was convicted on one count of sexual assault, a class two felony, and five counts of sexual conduct with a minor, all class two felonies, four of which were dangerous crimes against children (“DACA”). Gibbons was given an opportunity to file a supplemental brief in propria persona; he has not done so. After reviewing the record, we affirm Gibbons’s convictions and sentences.

FACTS AND PROCEDURAL HISTORY

¶2 We view the facts in the light most favorable to sustaining the judgment and resolve all reasonable inferences against Gibbons. *See State v. Fontes*, 195 Ariz. 229, 230 ¶ 2 (App. 1998). Gibbons’s daughter, M.G. was born in February 1999. Originally raised in Mexico, M.G. moved to Arizona in 2010 to live with Gibbons and her siblings. When M.G. was 13 years old, she and Gibbons were sitting on a bed when Gibbons started to touch her breasts and butt. Gibbons pulled her pants down and said that he was going to “teach” her. He then inserted his finger into M.G.’s vagina and “moved it around.” On another occasion, Gibbons had vaginal sex with M.G. while she was still 13 years old. Gibbons also had M.G., still 13 years old, perform oral sex on him on a different occasion. When M.G. was 14 years old, Gibbons again had vaginal sex with her. He told M.G. “[n]ot to tell anybody about what was going on” because “he would go to jail” and her family “wouldn’t know what to do without him.”

¶3 In May 2014, Gibbons and his wife, D.C., got into a fight about money. Gibbons hit D.C. multiple times and threatened to kill her and the children. Gibbons later pushed D.C. onto a bed and engaged in anal sex without D.C.’s consent. That same month, Gibbons also had anal sex with M.G., who was 15 years old at the time. D.C.’s medical examination showed

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that she suffered minor anal injuries. M.G.'s medical examination also showed anal injuries as well as injuries to her genitals.

¶4 The jury found Gibbons guilty of the sexual assault on D.C. It also found him guilty on five counts of sexual misconduct with a minor involving M.G. Of the latter counts, the jury found that M.G. was under the age of 15 for four of the five counts, and these counts received a DACA designation.

¶5 The trial court conducted the sentencing hearing in compliance with Gibbons's constitutional rights and Arizona Rule of Criminal Procedure 26. The court sentenced Gibbons to a presumptive 7-year term for the sexual assault, with 1125 days' presentence incarceration credit; presumptive, consecutive 20-year terms for the DACA counts; and a presumptive, consecutive 5-year term for the non-DACA count. As a result of a stipulation, the court ordered Gibbons to pay restitution in the amount of \$6,794.48. Gibbons timely appealed.

DISCUSSION

¶6 We review Gibbons's convictions and sentences for fundamental error. *See State v. Flores*, 227 Ariz. 509, 512 ¶ 12 (App. 2011). Counsel for Gibbons has advised this Court that after a diligent search of the entire record, counsel has found no arguable question of law. We have read and considered counsel's brief and fully reviewed the record for reversible error, *see Leon*, 104 Ariz. at 300, and find none. All of the proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure. So far as the record reveals, counsel represented Gibbons at all stages of the proceedings, and the sentences imposed were within the statutory guidelines. We decline to order briefing and affirm Gibbons's convictions and sentences.

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

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CONCLUSION

¶8 For the foregoing reasons, we affirm.



AMY M. WOOD • Clerk of the Court
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