IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Appellee*,

v.

STEVEN E QUILL, *Appellant*.

No. 1 CA-CR 17-0439
FILED 8-7-2018

Appeal from the Superior Court in Maricopa County
No. CR2015-005828-002
The Honorable Erin Otis, Judge

AFFIRMED

COUNSEL

The Poster Law Firm, Phoenix
By Rick Poster
Counsel for Appellant

Maricopa County Attorney's Office, Phoenix
By Joseph T. Maziarz
Counsel for Appellee

MEMORANDUM DECISION

Judge James P. Beene delivered the decision of the Court, in which Presiding Judge Maria Elena Cruz and Judge Jennifer B. Campbell joined.

B E E N E, Judge:

¶1 This appeal was timely filed in accordance with *Anders v. California*, 386 U.S. 738 (1967) and *State v. Leon*, 104 Ariz. 297 (1969) following Steven E. Quill's ("Quill") convictions for child prostitution. Quill's counsel searched the record on appeal and found no arguable question of law that is not frivolous. *See State v. Clark*, 196 Ariz. 530 (App. 1999). Quill was given the opportunity to file a supplemental brief *in propria persona* and elected to do so. After reviewing the entire record, we affirm Quill's convictions and sentences.

FACTS[1] AND PROCEDURAL HISTORY

¶2 Between August 1, 2014 and March 30, 2015, Quill engaged in multiple acts of prostitution with Victim B, a 14-year-old girl. Several incidents were sexual acts involving Victim B, her mother, and Quill. Another incident involved just Victim B and Quill.

¶3 On October 27, 2015, law enforcement conducted a confrontation call between Victim B and Quill in which Victim B indicated "she had turned 15" years old. Quill then asked her what she was "willing to do" and stated that "he would be willing to pay $75" for her "to do anything and everything." Quill was arrested later that day.

¶4 Quill was charged with five counts of child prostitution, class 2 dangerous felonies, and one count of child prostitution, a class 2 felony.[2] Quill proceeded to trial and was found guilty on four counts of child prostitution, class 2 dangerous felonies, and one count of child prostitution, a class 2 felony. Quill was sentenced to the presumptive term on each count to be served consecutively for a total of 90.5 years' incarceration. Quill timely appealed his convictions. We have jurisdiction pursuant to Article

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[1] "We view the facts in the light most favorable to sustaining the convictions with all reasonable inferences resolved against the defendant." *State v. Harm*, 236 Ariz. 402, 404 n.2, ¶¶ 2—3 (App. 2015) (citation omitted).

[2] Quill was also charged with ten counts of "sexual conduct with a minor," Victim A. The superior court severed the "sexual conduct with a minor" counts from the child prostitution counts involving Victim B. At the sentencing hearing, the court dismissed the sexual conduct with a minor counts without prejudice.

6, Section 9, of the Arizona Constitution, and Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1), 13-4031, and -4033(A)(1).

DISCUSSION

I. Jury Instructions

¶5 Quill raises several issues in his supplemental brief. He first argues that the superior court improperly instructed the jury concerning the elements of the charges for both sexual conduct with a minor and child prostitution. Here, the charges for which Quill was tried did not concern sexual conduct with a minor as those charges involving Victim A were severed from Quill's child prostitution charges involving Victim B. Moreover, the court did not err in instructing the jury on the elements of the charges for child prostitution. Under A.R.S. § 13-3212(B)(1), "[a] person who is at least eighteen years of age commits child sex trafficking by knowingly . . . [e]ngaging in prostitution with a minor who is under fifteen years of age." In the jury instructions for child prostitution counts one through five, the court stated the following: "The crime of child prostitution requires proof that the defendant was at least 18 years old and knowingly engaged in prostitution with a minor who was under 15 years of age."

¶6 Under A.R.S. § 13-3212(B)(2), "[a] person who is at least eighteen years of age commits child sex trafficking by knowingly . . . [e]ngaging in prostitution with a minor who the person knows or should have known is fifteen, sixteen or seventeen years of age." In the jury instruction for count six, the court stated that "[t]he crime of child prostitution requires proof that the defendant was at least 18 years old and knowingly engaged in prostitution with a minor who the defendant knew or should have known was 15, 16, or 17 years of age." Under counts one through six, the court instructed the jury that prostitution "means engaging in or agreeing or offering to engage in sexual conduct under a fee arrangement with any person for money or any other valuable consideration." That definition of prostitution is defined verbatim in A.R.S. § 13-3211(5). The court properly instructed the jury on the elements of each charge.

¶7 Quill next argues that the court abused its discretion by denying his request for a jury instruction on whether he knew Victim B's age before engaging in sexual activity with her. "We review for abuse of discretion whether the trial court erred in giving or refusing to give requested jury instructions." *State ex rel. Thomas v. Granville*, 211 Ariz. 468, 471, ¶ 8 (2005). Here, Quill never requested a jury instruction relating to knowledge of Victim B's age. However, the court did grant the State's motion *in limine* that restricted Quill from using knowledge of age as an affirmative defense. The court did not abuse its discretion in granting this motion. A.R.S. § 13-3212(B)(1) requires that a person who is at least eighteen years of age commits child sex trafficking when that person knowingly engages in prostitution with a minor who is under fifteen years of age. The statute does not require the defendant to know that the minor is under fifteen years of age, only that the person knowingly engages in prostitution with such a minor. *Id.* Therefore, the court did not abuse its discretion by restricting Quill's ability to argue knowledge of age as an affirmative defense.

¶8 Quill also argues that the court erred by refusing to administer his proposed jury questionnaire during *voir dire* and that *voir dire* inadequately explained the elements of the charges. However, Quill did not propose a jury questionnaire, and the jury is not required to know every element of the charges through *voir dire*. *See* Ariz. R. Crim. P. 18.5(d); *State v. Baumann*, 125 Ariz. 404, 409 (1980) ("The purpose of voir dire examination is to determine whether prospective jurors can fairly and impartially decide the case at bar").

¶9 Quill additionally argues that a jury instruction on transferred intent was erroneously given at trial and was not a correct statement of law even though the court did not give any intent instructions and neither attorney argued intent in closing arguments. Quill then argues that the court failed to give a clear instruction of reasonable doubt which should have been defined as "proof that leaves you firmly convinced of the defendant's guilt" even though the jury instructions defined reasonable doubt using this exact language. Therefore, these arguments fail.

II. Prior Conviction

¶10 Quill next argues that the State failed to disclose before trial that it would use his prior felony conviction to enhance his sentence in violation of his constitutional rights. However, in speaking with the prosecutor at a settlement conference, Quill stated "I understand you're using my – a felony that I have from 2008 or '07." The prosecutor

responded, "I mean we could – we could enhance – I mean we could enhance your sentence with that but I don't think we would need to . . . because you're already going away for the rest of your life if you're convicted after trial." At the sentencing hearing, the State asked for the presumptive term and did not use Quill's prior felony conviction as an aggravator. Also, although the court referenced Quill's prior felony conviction as a factor in aggravation, it gave Quill the presumptive sentence. Moreover, the court is bound by statute to consider prior felony convictions in sentencing, and Quill was aware at the time of his settlement conference that his prior felony conviction could be used to enhance his sentence. *See* A.R.S. § 13-703, -704, -705. Therefore, neither the State nor the court violated any of Quill's rights pertaining to the use of his prior felony conviction.

III. Evidentiary Rulings

¶11 Quill also argues that the superior court erred in making several evidentiary rulings that require reversal of his convictions. He argues that the court erred in denying his motion to suppress evidence obtained pursuant to a search warrant because Victim B's mother was not shown to be a reliable informant. However, Quill never moved to suppress any evidence obtained pursuant to a search warrant involving Victim B's mother, and the record does not reflect whether a search warrant involving Victim B's mother was ever executed. Therefore, the court did not err.

¶12 Quill further argues that the court erred by granting the State's motion *in limine* that precluded the defense to refer to the sexual histories of either Victim B or her mother. Here, the State's motion only pertained to Victim B. Moreover, the court's grant of the State's motion *in limine* specifically relied on A.R.S. § 13-1421 which precludes "[e]vidence relating to a victim's reputation for chastity and opinion evidence relating to a victim's chastity[.]" While the court allowed for evidence to be presented at trial of specific instances of Victim B's past sexual conduct with Quill, this was acceptable under A.R.S. § 13-1421(A)(1). Thus, the court did not err in this ruling.

IV. Mandatory Sentencing Statute

¶13 Quill finally argues that mandatory sentencing under A.R.S. § 13-705(A)[3] violates his constitutional rights because it imposes a life sentence without considering his background. However, A.R.S. § 13-705(A) does not apply to Quill as that provision pertains to adults who are "convicted of a dangerous crime against children in the first degree involving sexual assault of a minor who is twelve years of age or younger or sexual conduct with a minor who is twelve years of age or younger[.]" Here, Victim B was 14-years-old at the earliest incident of sexual conduct with Quill. Therefore, this argument is inapposite.

V. Review of the Record

¶14 In addition to evaluating the arguments raised in Quill's supplemental brief, we have conducted an independent review of the record. The record reflects no fundamental error in pretrial or trial proceedings. Quill was represented by counsel and present at all critical stages of the proceedings. The superior court conducted a *Donald*[4] hearing in Quill's presence.

¶15 The jury was properly composed of twelve jurors and two alternates. The State presented direct and circumstantial evidence sufficient for a reasonable jury to convict. The court appropriately instructed the jury on the elements of the charges. The key instructions concerning burden of proof, presumption of innocence, reasonable doubt, and the necessity of a unanimous verdict were also properly administered. The jury returned unanimous guilty verdicts on five of the six counts and a unanimous not guilty verdict on the other count.

¶16 The superior court received a presentence report, accounted for aggravating and mitigating factors, and provided Quill an opportunity to speak at sentencing. The court properly imposed a legal sentence for the crimes of which he was convicted.

CONCLUSION

¶17 We have reviewed the entire record for reversible error and find none; therefore, we affirm the convictions and resulting sentences.

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[3] A.R.S. § 13-604.01 was renumbered as A.R.S. § 13.705 in 2008.

[4] *State v. Donald*, 198 Ariz. 406 (App. 2000).

¶18 After the filing of this decision, defense counsel's obligation pertaining to Quill's representation in this appeal will end. Defense counsel need do no more than inform Quill of the outcome of this appeal and his future options, unless, upon review, counsel finds "an issue appropriate for submission" to the Arizona Supreme Court by petition for review. *State v. Shattuck*, 140 Ariz. 582, 584—85 (1984). On the Court's own motion, Quill has 30 days from the date of this decision to proceed, if he wishes, with a *pro per* motion for reconsideration. Further, Quill has 30 days from the date of this decision to proceed, if he wishes, with a *pro per* petition for review.

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