DIVISION ONE
FILED: 02/03/2011
RUTH WILLINGHAM, ACTING CLERK
BY: GH

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA, Appellee,	)	1 CA-CR 08-0793
	)	DEPARTMENT D
v.	)	**MEMORANDUM DECISION**
	)	(Not for Publication –
JAYME ROOSEVELT TAKALA, Appellant.	)	Rule 111, Rules of the Arizona Supreme Court)

Appeal from the Superior Court in Navajo County

Cause No. S-0900-CR-20070689

The Honorable Thomas L. Wing, Judge

AFFIRMED

Thomas C. Horne, Attorney General — Phoenix
By Kent E. Cattani, Chief Counsel,
Criminal Appeals/Capital Litigation Section
Attorneys for Appellee

Law Office of Marsha Gregory, P.C. — Springerville
By Marsha A. Gregory
Attorney for Appellant

Jayme Roosevelt Takala — Tucson
Appellant

W I N T H R O P, Presiding Judge

¶1 Jayme Roosevelt Takala ("Appellant") appeals his convictions and sentences resulting from a deadly car collision. Appellant's counsel has filed a brief in accordance with *Smith v. Robbins*, 528 U.S. 259 (2000); *Anders v. California*, 386 U.S. 738 (1967); and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), stating that she has searched the record on appeal and found no arguable question of law that is not frivolous. We therefore review the record for fundamental error. *See State v. Clark*, 196 Ariz. 530, 537, ¶ 30, 2 P.3d 89, 96 (App. 1999) (stating that this court reviews the entire record for reversible error). In addition, this court granted Appellant the opportunity to file a supplemental brief *in propria persona*, and he has done so.

¶2 We have appellate jurisdiction pursuant to the Arizona Constitution, Article 6, Section 9, and Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1) (2003), 13-4031 (2010), and 13-4033(A) (2010). Finding no reversible error, we affirm Appellant's convictions and sentences.

I. FACTS AND PROCEDURAL HISTORY

¶3 We review the facts in the light most favorable to sustaining the verdict and resolve all reasonable inferences against Appellant. *See State v. Kiper*, 181 Ariz. 62, 64, 887 P.2d 592, 594 (App. 1994).

¶4 On June 28, 2007, a grand jury issued an indictment, charging Appellant with eleven counts, including second degree murder, aggravated assault, criminal damage, and aggravated DUI.[1]

¶5 At trial, the State presented the following evidence: On June 23, 2007, Appellant purchased seven or eight "shots" of Apple 99, an alcoholic beverage, and consumed them periodically while working as a cook at Burger King. At approximately 10:30 p.m., a co-worker, Patrick Barela ("Patrick"), saw Appellant sitting in his truck. Patrick approached Appellant to inquire why he wasn't inside working and noticed Appellant's speech was slurred and the smell of alcohol on his breath. Approximately a half-hour later, Patrick and Carlos Barela ("Carlos") were driving in front of the Burger King and noticed Appellant pull out of the parking lot. Concerned that Appellant was intoxicated, Patrick rolled down the passenger side window and asked Appellant, "What are you doing?" Patrick told Appellant to "pull over and stop . . . and let one of us drive" before he hurt somebody. Instead, Appellant began swerving in and out of traffic lanes while driving at a high rate of speed. Minutes later, Carlos drove up a hill on Navajo Boulevard, where he saw Appellant's truck lodged inside the Hilltop Café, and a Chevrolet Impala on fire. Appellant had collided with the

[1] Before trial, Appellant's second degree murder charges were reduced to manslaughter.

Impala at the intersection of Navajo Boulevard and Hermosa Drive.[2] An accident reconstructionist estimated Appellant's speed at impact to be at least eighty-five miles per hour. An emergency medical technician who arrived at the scene reported that he smelled alcohol on Appellant's breath. Appellant was taken to the hospital, where his blood was taken. His blood alcohol level was later determined to be .31.

¶6 Carlos and others were able to pull C.S. out of the burning Impala, but were unable to rescue two other people in the vehicle. The burnt remains of two-year-old L.T. and twenty-six-year old S.R. were found in the burned Impala. Although C.S. survived, the baby she was pregnant with did not. C.S. and the occupants of the Pontiac received injuries as a result of the collision.

¶7 Appellant waived his right to a jury trial, and a bench trial began on July 9, 2008.[3] Appellant was subsequently convicted of the following offenses: Counts I, II, and III, manslaughter, each a class two dangerous felony; Count IV, aggravated assault, a class three dangerous felony; Count VII,

---

[2] It was later discovered that a third vehicle, a Pontiac Sunfire, was also involved in the collision. The Pontiac had been struck by the burning Impala immediately after Appellant's vehicle collided with the Impala.

[3] The waiver included an agreement between Appellant and the State to reduce Appellant's second degree murder charges to lesser-included charges of dangerous nature manslaughter.

criminal damage, a class five felony; Count X, aggravated driving while under the influence of intoxicating liquor, a class four felony; and Count XI, aggravated driving with a blood alcohol content of .08 or more, a class four felony.

¶8 The court sentenced Appellant to the following terms of incarceration: Count I, an aggravated term of fifteen years in the Arizona Department of Corrections ("ADC"), consecutive to the sentence imposed in Count II; Count II, an aggravated term of twelve years in ADC, consecutive to the sentence imposed in Counts III, IV, VII, X, and XI; Count III, an aggravated term of thirteen years in ADC; Count IV, an aggravated term of ten years in ADC; Count VII, an aggravated term of two years in ADC; and Counts X and XI, two and one-half years in ADC.[4] The court credited Appellant for 427 days of presentence incarceration served on the sentences for Counts 3, 4, 7, 10, and 11. Appellant filed a timely notice of appeal.

II. ANALYSIS

¶9 In his supplemental brief, Appellant has raised one issue, arguing the record "discloses only scant evidence of a waiver of trial by jury; but nothing approaching a knowing, voluntary and intelligent waiver." We have reviewed the record

[4] Subsequently, Appellant was ordered to pay restitution to the victims involved in the collision, the owner of the Hilltop Café, and the Victim's Assistance Program.

and find that Appellant knowingly, voluntarily, and intelligently waived his right to a jury trial.

¶10 At a motions hearing on June 30, 2008, Appellant's counsel presented a waiver agreement signed by Appellant, his counsel, and counsel for the State. In the agreement, Appellant agreed to waive his right to a jury trial in exchange for, as previously noted, the State's agreement to reduce the second degree murder charges to dangerous nature manslaughter charges. The court advised Appellant in detail about waiving his right to a jury trial. Specifically, the court advised Appellant that the judge, not the jury, would be deciding his guilt and sentence, and the court explained the burden of proof. The court further explained the jury selection process to Appellant and advised him that process would not take place at a bench trial. Appellant acknowledged he understood all of the above. The court also described in detail the agreement between Appellant and the State. Appellant admitted reading, discussing, understanding, and signing the waiver agreement. Appellant also confirmed he had not been coerced into the waiver, had no alcohol, drugs, or medication within the previous twenty-four hours, and he was thinking clearly. Appellant himself acknowledged at the hearing that he intelligently, freely, and voluntarily entered the waiver. The record supports

the conclusion that Appellant's waiver of his right to a jury trial was made knowingly, voluntarily, and intelligently.

¶11 We have reviewed the entire record for reversible error and find none. *See Leon*, 104 Ariz. at 300, 451 P.2d at 881; *Clark*, 196 Ariz. at 537, ¶ 30, 2 P.3d at 96. The evidence presented at trial was substantial and supports the verdicts, and the sentences were within the statutory limits. Appellant was represented by counsel at all stages of the proceedings and was given the opportunity to speak at sentencing. The proceedings were conducted in compliance with his constitutional and statutory rights and the Arizona Rules of Criminal Procedure.

¶12 After filing of this decision, defense counsel's obligations pertaining to Appellant's representation in this appeal have ended. Counsel need do no more than inform Appellant of the status of the appeal and of his future options, unless counsel's review reveals an issue appropriate for petition for review to the Arizona Supreme Court. *See State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984). Appellant has thirty days from the date of this decision to proceed, if he desires, with a *pro per* motion for reconsideration or petition for review.

III. CONCLUSION

¶13 Appellant's convictions and sentences are affirmed.

_____/S/_____
LAWRENCE F. WINTHROP, Presiding Judge

CONCURRING:

_____/S/_____
PATRICIA K. NORRIS, Judge

_____/S/_____
PATRICK IRVINE, Judge