DIVISION ONE
FILED: 04-08-2010
PHILIP G. URRY, CLERK
BY: GH

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA, Appellee, v. JAMES WALLACE GALLOWAY, Appellant.	)	No. 1 CA-CR 08-0822 DEPARTMENT E **MEMORANDUM DECISION** (Not for Publication – Rule 111, Rules of the Arizona Supreme Court)

Appeal from the Superior Court in Maricopa County

Cause No. CR 2005-010071-001-DT

The Honorable Maria del Mar Verdin, Judge

AFFIRMED

Terry Goddard, Arizona Attorney General — Phoenix
by Kent E. Cattani, Chief Counsel,
Criminal Appeals/Capital Litigation Section
Attorneys for Appellee

James J. Haas, Maricopa County Public Defender — Phoenix
by Terry J. Adams, Deputy Public Defender
Attorneys for Appellant

H A L L, Judge

¶1 James Wallace Galloway (defendant) appeals from his convictions and the sentences imposed.

¶2 Defendant's appellate counsel filed a brief in accordance with *Anders v. California,* 386 U.S. 738 (1967), and *State v. Leon,* 104 Ariz. 297, 451 P.2d 878 (1969), advising that, after a diligent search of the record, he was unable to find any arguable grounds for reversal. This court granted defendant an opportunity to file a supplemental brief, which he has not done. *See State v. Clark*, 196 Ariz. 530, 537, ¶ 30, 2 P.3d 89, 96 (App. 1999).

¶3 We review for fundamental error, error that goes to the foundation of a case or takes from the defendant a right essential to his defense. *See State v. King*, 158 Ariz. 419, 424, 763 P.2d 239, 244 (1988). We view the evidence presented at trial in a light most favorable to sustaining the verdict. *State v. Cropper,* 205 Ariz. 181, 182, ¶ 2, 68 P.3d 407, 408 (2003). Finding no reversible error, we affirm.

¶4 Defendant was charged by indictment with three counts (Counts 1, 11, and 26) of furnishing obscene or harmful items to minors, class five felonies, in violation of Arizona Revised Statutes (A.R.S.) section 13-3506(A) (Supp. 2009); twenty-seven counts (Counts 2, 5-7, 9, 10, 12-18, 20-25, 27, 34, 38, 41-43, 46, and 48) of sexual conduct with a minor, class two felonies

and dangerous crimes against children, in violation of A.R.S. § 13-1405(A) (Supp. 2009); five counts (Counts 3, 19, 35, 36, and 40) of public sexual indecency to a minor, class five felonies, in violation of A.R.S. § 13-1403(A) (Supp. 2009); seven counts (Counts 4, 28, 30, 32, 37, 39, and 44) of molestation of a child, class two felonies and dangerous crimes against children, in violation of A.R.S. § 13-1410(A) (Supp. 2009); and six counts (Counts 8, 29, 31, 33, 45, and 47) of sexual abuse, class three felonies and dangerous crimes against children, in violation of A.R.S. § 13-1404(A) (Supp. 2009).

¶5 The following evidence was presented at trial. N.G., the defendant's daughter, testified that when she was approximately seven years old she and defendant began watching pornography together in his bedroom. After about a month of watching the pornography together, defendant began groping and fondling her breasts and buttocks while they watched.

¶6 When N.G. was approximately ten years old, she and defendant engaged in vaginal and anal intercourse while watching pornography on multiple occasions. Defendant also had N.G. perform oral sex on him and he performed oral sex on her while watching pornography. N.G. testified that she and defendant would engage in pornography viewing and sexual intercourse on a routine basis.

¶7 When N.G. was eleven years old, her friend, S.E., spent the night with N.G. at defendant's apartment. Defendant, N.G., and S.E. watched pornography together and N.G. and defendant engaged in vaginal intercourse. Defendant also performed oral sex on N.G. and S.E.

¶8 Soon thereafter, defendant began using “sex toys” with N.G. N.G. also testified that she and defendant began having sex in his tow truck on repeated occasions.

¶9 S.E. testified that after spending some time at defendant's house, defendant starting walking around the house naked. She also stated that he would touch her breasts and vagina while sitting in the living room. S.E. was also present when N.G. and defendant had vaginal intercourse inside his tow truck. During one "driving lesson," defendant and S.E. had vaginal intercourse. S.E. also testified that she repeatedly performed oral sex on defendant and that he repeatedly fondled her breasts and vagina.

¶10 During the summer of 2004, F.G., N.G.'s mother took her to a therapist where N.G. disclosed that she and defendant had engaged in sexual activity. F.G. then called S.E.'s mother and informed her about the abuse.

¶11 Detectives N.D. and J.L. interviewed S.E. and N.G. After the interviews, the detectives arranged for a "confrontation call" with S.E., N.G., and defendant. After the

confrontation call, Detective J.L. contacted Haverford Township Police Department in Pennsylvania, where defendant lived at the time, to obtain a search warrant.

¶12 On August 16, 2004, the detectives flew to Pennsylvania and executed the search warrant on defendant's home. The detectives seized several videos containing pornography and a sex toy.

¶13 After a twelve-day trial, the jury found defendant guilty on Counts 1-4, 6-26, 28-45. The trial court sentenced defendant to the presumptive term of one and one-half years imprisonment on Counts 1, 3, 11, 19, 26, 35, 36, and 40; the presumptive term of five years imprisonment on Counts 8, 29, 31, 33, and 45; the presumptive term of 17 years imprisonment on Counts 4, 28, 30, 32, 37, 39, and 44; the presumptive term of 20 years imprisonment on Counts 34, 38, 41, 42, and 43; and a presumptive life term on Counts 2, 6, 7, 9, 10, 12-18, and 20-25. Defendant was given credit for 1,478 days of presentence incarceration on Count 4. The trial court ordered all sentences to be served consecutively.

¶14 We have read and considered counsel's brief and have searched the entire record for reversible error. *See Leon,* 104 Ariz. at 300, 451 P.2d at 881. We find none. All of the proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure. Defendant was given an opportunity to

speak before sentencing, and the sentences imposed was within statutory limits. Furthermore, based on our review of the record, there was sufficient evidence for the jury to find that defendant committed the offenses for which he was convicted.

¶15 After the filing of this decision, counsel's obligations pertaining to defendant's representation in this appeal have ended. Counsel need do no more than inform defendant of the status of the appeal and his future options, unless counsel's review reveals an issue appropriate for submission to the Arizona Supreme Court by petition for review. *See State v. Shattuck,* 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984). Defendant 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. Accordingly, defendant's convictions and sentences are affirmed.

/s/
PHILIP HALL, Judge

CONCURRING:

/s/
SHELDON H. WEISBERG, Presiding Judge

/s/
JOHN C. GEMMILL, Judge