

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



DIVISION ONE
FILED: 04/29/10
PHILIP G. URRY, CLERK
BY: JT

STATE OF ARIZONA,) 1 CA-CR 08-1015
)
Appellee,) DEPARTMENT A
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
) Rule 111, Rules of the
RONALD ALLEN ROWE,) Arizona Supreme Court)
)
Appellant.)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2008-118523-001 DT

The Honorable Maria Del Mar Verdin, Judge

AFFIRMED

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

Theresa M. Armendarez, P.L.C. Phoenix
by Theresa M. Armendarez
Attorney for Appellant

W I N T H R O P, Judge

¶1 Ronald Allen Rowe ("Appellant") appeals from his convictions and sentences for attempted armed robbery and multiple counts of kidnapping and aggravated assault, all non-

repetitive, dangerous felonies. Appellant's 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 this court that after a search of the record on appeal he finds no arguable question of law. See *Smith v. Robbins*, 528 U.S. 259 (2000); *Anders*, 386 U.S. at 744. This court afforded Appellant the opportunity to file a supplemental brief *in propria persona*, but he did not do so. Counsel now asks this court to search 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). After reviewing the entire record, we affirm Appellant's convictions and sentences.

FACTS AND PROCEDURAL BACKGROUND¹

¶2 On the afternoon of March 18, 2008, Appellant entered a Phoenix hair salon where JW, one of the salon's owners, was working with a client. JW's husband, RW, was working with another client in a back room of the salon. Appellant, who was carrying a briefcase,² held a gun to JW's head and demanded cash

¹ 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).

² Police later found a ski mask, painter's tape, brass knuckles, syringes, gun, t-shirt, and handcuffs in the briefcase.

and wallets from the women. Appellant then pushed the women, at gunpoint, toward the back room where RW was working. During the commotion, JW alerted her husband by loudly saying the word "cowboy," a code word the couple had developed as part of a plan in the event a situation such as this should arise.

¶3 RW heard the code word and grabbed a gun he kept hidden, wrapped in a towel, in his work station. Appellant then pushed JW and her client onto the floor in RW's room and, holding the gun to RW's head, ordered him to the floor. JW distracted Appellant by pleading with him, and RW shot him. RW followed Appellant out of the room and held him at gunpoint until police arrived.

¶4 Appellant was charged by indictment with one count of armed robbery (Count 1) and two counts of kidnapping (Counts 3 and 4), all class two dangerous felonies, and three counts of aggravated assault (Counts 2, 5, and 6), class three dangerous felonies. The State also alleged aggravating factors. A twelve-member jury convicted Appellant on all six counts and the court held a hearing on the aggravators. Taking into account the three proven aggravators - emotional harm, pecuniary gain, and threatened infliction of serious physical injury - as well as prior felony convictions and multiple victims, the court sentenced Appellant to aggravated terms on all counts: ten years for Counts 1, 2, 5, and 6, and fifteen years for Counts 3 and 4.

It ordered that Counts 1 and 2 be served concurrently, but consecutive to Count 3, and that Counts 3, 4, 5, and 6 be served consecutively, with 108 days of presentence incarceration credit on Count 1. Appellant filed a timely notice of appeal and we have jurisdiction pursuant to Article 6, Section 9 of the Arizona Constitution, and Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1) (2003), 13-4031 (2010), and 13-4033(A) (2010).

ANALYSIS

¶5 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 sentences were within the statutory limits. Appellant was represented by counsel and was offered 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.³ Further, substantial evidence supported the jury's verdicts, including testimony from three of the four victims.

³ Appellant absconded on the third day of trial and the court issued a bench warrant for his arrest. A defendant's "decision to violate his conditions of release by absconding" constitutes "a voluntary waiver of the right to be present at his trial." *State v. Holm*, 195 Ariz. 42, 43, ¶ 4, 985 P.2d 527, 528 (App. 1998), *disapproved on other grounds by State v. Estrada*, 201 Ariz. 247, 34 P.3d 356 (2001).

¶6 After the 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.

CONCLUSION

¶7 We affirm Appellant's convictions and sentences.

_____/S/_____
LAWRENCE F. WINTHROP, Judge

CONCURRING:

_____/S/_____
MAURICE PORTLEY, Presiding Judge

_____/S/_____
MARGARET H. DOWNIE, Judge