

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

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE



DIVISION ONE  
FILED: 08/09/2011  
RUTH A. WILLINGHAM,  
CLERK  
BY: DLL

STATE OF ARIZONA,

Appellee,

v.

DAVID DONALD FREI,

Appellant.

1 CA-CR 10-0049

DEPARTMENT D

**MEMORANDUM DECISION**

(Not for Publication -  
Rule 111, Rules of the  
Arizona Supreme Court)

Appeal from the Superior Court in Yuma County

Cause No. S1400CR200701316

The Honorable Andrew W. Gould, Judge

**AFFIRMED**

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Phoenix

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David Donald Frei  
Appellant

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**I R V I N E**, Presiding Judge

¶1 This appeal is filed in accordance with *Anders v. California*, 386 U.S. 738 (1967) and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969). Counsel for Frei asks this Court to search the record for fundamental error. Frei was given an opportunity to file a supplemental brief in propria persona, and he has done so. Finding no fundamental error, we affirm Frei's convictions and sentences for two counts of aggravated harassment.

**FACTS AND PROCEDURAL HISTORY**

¶2 We view the facts in the light most favorable to sustaining the trial court's judgment and resolve all reasonable inferences against Frei. *State v. Fontes*, 195 Ariz. 229, 230, ¶ 2, 986 P.2d 897, 898 (App. 1998). D.S. and Frei began a friendship that eventually turned into a romantic relationship. Thereafter, the nature of the relationship changed, and D.S. asked Frei to leave her alone, but he did not listen. D.S. obtained a restraining order against Frei. Although Frei was served with the restraining order, he repeatedly called D.S. and also went to her residence and banged on the doors and windows, demanding to be let into the house. As a result of those incidents, the State charged Frei with two counts of aggravated harassment, class 6 felonies. See Ariz. Rev. Stat. § 13-2921.01(A)(1), (C) (2010).

¶3 After a jury trial, Frei was found guilty as charged. Further, the jury found the offenses to involve domestic violence. The trial court conducted the sentencing hearing in compliance with Frei's constitutional rights and Rule 26 of the Arizona Rules of Criminal Procedure. The court sentenced him to presumptive 3.75 year sentences on each count with the sentences to run concurrently. Frei was given 234 days of presentence incarceration credit. He timely appealed.

#### DISCUSSION

¶4 We review Frei's convictions and sentences for fundamental error. *See State v. Gendron*, 168 Ariz. 153, 155, 812 P.2d 626, 628 (1991). Frei's supplemental brief consists of photocopies of various materials, including attorney/client communication, and copies of documents and news articles discussing various cases to which Frei was a party. Some of these documents contain hand-written annotations about the trial judge, document codes and various other notes regarding a prior civil settlement with a church. In a cover page to his brief, Frei notes that he "didn't get time to finish drafting [the] brief" but that we "can get the idea of what [h]as happend [sic] here." Frei raises a variety of issues. We address each in turn.

#### ***Judicial bias***

¶5 In his brief, Frei includes drawings of the trial court, a church and a bank that holds part of a civil settlement

he obtained from the depicted church. The pictures note "[e]xtreme [d]iscrimination, [n]ot fair, court, [t]rial." Frei also included hand-written notes on pleadings circling the trial judge's name and noting the judge presided over prior actions in which Frei was a party. As best we understand Frei's argument, Frei asserts the trial judge was biased.

¶16 A trial judge is presumed to be unbiased. *State v. Henry*, 189 Ariz. 542, 546, 944 P.2d 57, 61 (1997); *State v. Hurley*, 197 Ariz. 400, 404, ¶ 24, 4 P.3d 455, 459 (App. 2000). To rebut the presumption, a party must prove bias or prejudice by a preponderance of the evidence. *Hurley*, 197 Ariz. at 404-05, ¶ 24, 4 P.3d at 459-60. Frei moved for a change of judge prior to his trial. A hearing was held on the motion. Frei asserted the trial judge was biased because: (1) he presided over a criminal matter involving Frei that was ultimately reversed on appeal; (2) he ruled against Frei in a civil case, freezing Frei's assets, which included a large settlement from a church; (3) he was a member of the parish from which Frei obtained a substantial judgment in a civil lawsuit; and (4) the cumulative effect of all of these things would not allow for a fair trial.

¶17 The only evidence Frei presented of the alleged bias were adverse judicial rulings. We note adverse judicial rulings do not demonstrate bias or prejudice. See *Smith v. Smith*, 115 Ariz. 299, 303, 564 P.2d 1266, 1270 (App. 1977) ("[T]he bias and

prejudice necessary to disqualify a judge must arise from an extra-judicial source and not from what the judge has done . . . in the case”).

¶18 Although Frei asserted the trial judge attended the same church that he received a settlement from, he provided no evidence to support this assertion. As the judge hearing the motion pointed out, even if the trial judge was a member of the parish, there was no evidence presented that the judge would “show bias or prejudice . . . against Mr. Frei.” At Frei’s mitigation hearing, the trial judge noted that while his son was baptized at the church where Frei obtained a civil judgment, he did not attend that church. Frei fails to cite any portion of the record demonstrating any alleged bias by the trial judge. Therefore, he has not met his burden.<sup>1</sup> Additionally, our review of the entire record on appeal demonstrates no indication of judicial bias or prejudice towards Frei.

***Order of protection***

¶19 Frei asserts that a “legal question of law” is whether “the state [can] uphold a conviction on a perjury/sworn statement to get and [sic] order of protection.” We understand

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<sup>1</sup> Frei does not provide any citations to the trial record. By not citing to the record, Frei has not complied with Arizona Rule of Criminal Procedure 31.13.c.(1)(vi) or Arizona Rule of Civil Appellate Procedure 13(a)6. In our discretion, we decide the issues raised on the merits. See *State v. Van Alcorn*, 136 Ariz. 215, 216-17, 665 P.2d 97, 98-99 (App. 1983).

this argument as challenging the validity of the order of protection that formed the basis for Frei's two convictions for aggravated harassment. This appeal from his criminal convictions and sentences, however, is not the proper forum to raise such a claim. Accordingly, we do not address this argument.

***Miscellaneous issues***

¶10 In his brief, Frei also includes notes detailing definitions for a variety of things including cumulative error analysis, cohabitation, color of law and burden of proof. Because Frei makes no logical argument regarding these definitions, we do not address them.

¶11 Counsel for Frei has advised this Court that after a diligent search of the entire record, she has found no arguable question of law. We have read and considered counsel's brief, Frei's supplemental brief and fully reviewed the 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. So far as the record reveals, Frei was represented by counsel or advisory counsel at all stages of the proceedings, and the sentence imposed was within the statutory limits. We decline to order briefing, and we affirm Frei's convictions and sentences.

¶12 Upon the filing of this decision, defense counsel shall inform Frei of the status of his appeal and of his future

options. Defense 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, 684 P.2d 154, 156-57 (1984). On the Court's own motion, Frei shall have 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**

¶13 We affirm.

/s/  
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PATRICK IRVINE, Presiding Judge

CONCURRING:

/s/  
\_\_\_\_\_  
JOHN C. GEMMILL, Judge

/s/  
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PHILIP HALL, Judge