

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: 05/17/2011
RUTH A. WILLINGHAM,
CLERK
BY: GH

STATE OF ARIZONA,) No. 1 CA-CR 10-0283
)
Appellee,) DEPARTMENT C
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
DAVID EARL BOOKMAN,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
)
)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. CR2009-005872-001 DT

The Honorable Barbara L. Spencer, Judge *Pro Tempore*

CONVICTION AFFIRMED; SENTENCE AFFIRMED AS MODIFIED

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

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Attorneys for Appellant

David Earl Bookman Florence
Appellant

B R O W N, Judge

¶1 David Earl Bookman appeals his conviction and sentence
for one count of aggravated assault. Counsel for Bookman 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 searching the record on appeal, she was unable to find any arguable grounds for reversal. Bookman was granted the opportunity to file a supplemental brief *in propria persona*, and he has done so.

¶12 Our obligation is to review the entire record for reversible error. *State v. Clark*, 196 Ariz. 530, 537, ¶ 30, 2 P.3d 89, 96 (App. 1999). We view the facts in the light most favorable to sustaining the conviction and resolve all reasonable inferences against Bookman. *State v. Guerra*, 161 Ariz. 289, 293, 778 P.2d 1185, 1189 (1989). Finding no reversible error, we affirm.

BACKGROUND

¶13 In January 2009, an indictment was filed charging Bookman with aggravated assault, a class 3 dangerous felony pursuant to Arizona Revised Statutes ("A.R.S.") section 13-1203 and -1204 (2010 & Supp. 2010).¹ In February, the State attached a "Plea Offer Form" to its notice of disclosure. At the initial pretrial conference held in April, Bookman rejected the State's plea offer. The following evidence was presented at trial.

¹ Absent material revision after the date of the alleged offense, we cite the statute's current version.

¶14 The victim testified that in July 2008, she attended a party at the home of a friend, where she smoked marijuana and phencyclidine ("PCP"). She recognized Bookman, who was also at the party, as a childhood friend. After the party, she and Bookman rented a motel room and smoked crack cocaine until approximately 5:00 a.m.

¶15 After a sexual encounter, the victim told Bookman to take her home. Bookman abruptly left the hotel room and started his vehicle. The victim jumped on the hood of the vehicle while Bookman was backing out, afraid that Bookman was going to leave her stranded at the motel. Bookman stopped his vehicle and allowed the victim to get inside, accelerating immediately after she entered the car but before the passenger side door was closed. He continued to accelerate down the street, violently swerving the vehicle. As the victim began to fall out of the door, she grabbed onto the side-door pocket. She was dragged approximately one-quarter of a mile before letting go of the door. She sustained substantial injuries, including broken ribs, a collapsed lung, a lacerated liver, and severe skin abrasions.

¶16 A jury found Bookman guilty of aggravated assault and found that it was a dangerous offense. The court found Bookman had four prior historical felony convictions and sentenced him to an enhanced, presumptive term of eleven and one-quarter

years' imprisonment with 145 days of presentence incarceration credit. He timely appealed.

DISCUSSION

¶7 Bookman raises several issues in his supplemental brief; however, because he failed to raise them in the trial court, we review for fundamental error only. See *State v. Henderson*, 210 Ariz. 561, 563, ¶ 1, 115 P.3d 601, 603 (2005). To prevail under this standard of review, Bookman must establish that: (1) error occurred; (2) the error was fundamental; and (3) the error caused him prejudice. *Id.* at 568, ¶¶ 23-26, 115 P.3d at 608.

¶8 Bookman first complains that he did not get "a chance to fight or ask for a lesser plea deal[,]" and that his "lawyer never [asked] me to fight for it." The record indicates that during a *Donald*² hearing, the court asked Bookman if his attorney had explained the State's offer, and Bookman answered in the affirmative. The court then asked him if he had any questions about the offer, and Bookman answered in the negative. When the court inquired if Bookman wished to accept or reject the State's offer, he replied, "reject."

¶9 Based on this record, we find no error, much less fundamental error. The decision whether to extend a plea offer

² *State v. Donald*, 198 Ariz. 406, 418, ¶ 46, 10 P.3d 1193, 1205 (App. 2000).

is an executive function. See *State v. Vallejo*, 215 Ariz. 193, 197, ¶ 15, 148 P.3d 916, 920 (App. 2007) (Howard, J., concurring). Therefore, a defendant has no right to plea bargain. *State v. Delk*, 153 Ariz. 70, 72, 734 P.2d 612, 614 (App. 1986). Moreover, to the extent Bookman asserts that his lawyer was responsible for failing to request a lesser plea deal or for failing to ask Bookman to fight for a lesser deal, this issue is not properly before us. *State v. Spreitz*, 202 Ariz. 1, 3, ¶ 9, 39 P.3d 525, 527 (2002) (recognizing that claims of ineffective assistance of counsel are not considered on direct appeal regardless of merit).

¶10 Bookman next argues that the officers investigating the scene “never [asked] the witnesses . . . what had [happened,]” and if they had, it “could have cleared [him] of any [wrongdoing.]” We need not decide whether error occurred here, however, because Bookman has failed to establish prejudice. Bookman’s assertion is nothing more than speculation and is therefore insufficient to establish prejudice. See *State v. Martin*, 225 Ariz. 162, 166, ¶ 15, 235 P.3d 1045, 1049 (App. 2010). Moreover, at trial, the victim testified that Bookman was the perpetrator and eyewitness testimony revealed that a man fitting Bookman’s description committed the offense. Therefore, Bookman has made no showing of prejudice by the officers’ alleged failure to interview certain witnesses.

¶11 Bookman next challenges the credibility of the victim's testimony. He argues that the victim made several different statements and asserts that they were "not true at all." Although the victim admitted that she may have made inconsistent statements, "[n]o rule is better established than that the credibility of the witnesses and the weight and value to be given to their testimony are questions exclusively for the jury." *State v. Clemons*, 110 Ariz. 555, 556-57, 521 P.2d 987, 988-89 (1974). We do not reweigh this evidence on appeal. *State v. Tison*, 129 Ariz. 546, 552, 633 P.2d 355, 361 (1981).

¶12 Finally, Bookman challenges the court's impartiality, stating that the trial judge had a "conflict of [interest]" because she said she recognized the name of one of the people who attended the party where Bookman and the victim were present. The trial judge, outside the presence of the jury, explained that in 1996, when she was a public defender, she had represented someone with the same name. She asked the attorneys if they had any objection to her continuing as the trial judge in the case and neither one objected. Nothing in the record supports Bookman's conflict of interest claim; therefore, we find no error, much less fundamental error.

¶13 We have searched the entire record for fundamental error and find none. All of the proceedings were conducted in accordance with the Arizona Rules of Criminal Procedure. The

record shows that Bookman was present and represented by counsel at all pertinent stages of the proceedings, except for the reading of the verdict, when he was voluntarily absent. He was afforded the opportunity to speak before sentencing, and the sentence imposed was within statutory limits.

¶14 We have found error, however, in the trial court's calculation of presentence incarceration credit. Bookman received 145 days of credit for the present case. Because Bookman was incarcerated on October 27, 2009, and sentenced on March 22, 2010, he is entitled to 147 days of presentence credit. Accordingly, we modify Bookman's sentence to reflect 147 days of presentence incarceration credit, and otherwise affirm Bookman's conviction and sentence. A.R.S. § 13-712(B) (2010); *see State v. Stevens*, 173 Ariz. 494, 496, 844 P.2d 661, 663 (App. 1992).

¶15 Upon the filing of this decision, counsel shall inform Bookman of the status of the appeal and his 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). Bookman shall have

thirty days from the date of this decision to proceed, if he so desires, with an *in propria persona* motion for reconsideration or petition for review.

/s/

MICHAEL J. BROWN, Judge

CONCURRING:

/s/

DANIEL A. BARKER, Presiding Judge

/s/

MARGARET H. DOWNIE, Judge