

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



DIVISION ONE
FILED: 07/12/2011
RUTH A. WILLINGHAM,
CLERK
BY: DLL

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) No. 1 CA-CR 10-0526
)
Appellee,) DEPARTMENT A
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
ALBERT STANLEY WACH,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. CR2008-177450-001 SE

The Honorable Lisa M. Roberts, Judge *Pro Tem*

AFFIRMED

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

Bruce F. Peterson, Maricopa County Legal Advocate Phoenix
By Frances J. Gray, Deputy Legal Advocate
Attorney for Appellant

D O W N I E, Judge

¶1 Albert Stanley Wach appeals his conviction for aggravated assault, a class three dangerous felony and violation of Arizona Revised Statutes ("A.R.S.") section 13-1204. Pursuant to *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), defense counsel has searched the record, found no arguable question of law, and asked that we review the record for fundamental error. See *State v. Richardson*, 175 Ariz. 336, 339, 857 P.2d 388, 391 (App. 1993). Wach was given an opportunity to file a supplemental brief *in propria persona*, but he did not do so. On appeal, we view the evidence in the light most favorable to sustaining the conviction. *State v. Tison*, 129 Ariz. 546, 552, 633 P.2d 355, 361 (1981).

FACTS AND PROCEDURAL HISTORY

¶2 The victim and his brother, Brian, were at a bar. A patron named Bang approached Brian and became verbally abusive. Convinced he was going to be assaulted, Brian "protected [himself and] threw the first punch." As the men were punching each other, Wach began choking Brian from behind.

¶3 The brothers left the bar, whereupon Bang ran outside and began attacking Brian. When the victim tried to intervene, Wach stood in front of him. As the victim tried to walk around him, Wach bumped into him to block his passage. The victim kicked Wach in the face. Wach stabbed the victim in his side.

The victim was taken to the hospital, where it was discovered that a knife or sharp object had sliced his liver.

¶14 The victim identified Wach as his assailant in a photo line-up. Wach's first trial ended in a mistrial after the jury could not reach a unanimous verdict. During deliberations in the second trial, after the alternates were released, a juror reported that she had been approached by Wach's sister. The sister told the juror that they knew each other in high school. The juror expressed concern that she was known by Wach's sister, "should the verdict not come out in the Defendant's favor." The parties agreed to release this juror, and an alternate was called back to replace her. The court instructed the jury to begin deliberations anew.

¶15 The jury found Wach guilty of aggravated assault, with a special finding of dangerousness. It also found two aggravators: the offense involved the infliction of serious physical injury, and Wach's conduct required the victim to undergo surgery. The court imposed an aggravated term of 9 years' imprisonment, with 171 days of presentence incarceration credit.

DISCUSSION

¶16 We have read and considered the brief submitted by defense counsel and have reviewed the entire record. We find no fundamental error. All of the proceedings were conducted in

compliance with the Arizona Rules of Criminal Procedure, and the sentence imposed was within the statutory range. Wach was present at all critical phases of the proceedings and was represented by counsel. The jury was properly impaneled and instructed. The jury instructions were consistent with the offense charged.

¶17 Though an issue arose during deliberations, the court promptly dismissed the juror at issue. There is no indication the remaining jurors were improperly influenced; they were merely advised juror number five had been released. The defense agreed to releasing the juror and replacing her with an alternate. *Cf. Schlecht v. Schiel*, 76 Ariz. 214, 220, 262 P.2d 252, 256 (1953) ("By the rule of invited error, one who deliberately leads the court to take certain action may not upon appeal assign that action as error.").

CONCLUSION

¶18 We affirm Wach's conviction and sentence. Counsel's obligations pertaining to Wach's representation in this appeal have ended. Counsel need do nothing more than inform Wach 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. *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984). On the court's own motion, Wach shall have thirty days from the

date of this decision to proceed with an *in propria persona* motion for reconsideration or petition for review.

/s/
MARGARET H. DOWNIE, Judge

CONCURRING:

/s/
DIANE M. JOHNSEN, Presiding Judge

/s/
JON W. THOMPSON, Judge