

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: 05/24/2011
RUTH A. WILLINGHAM,
CLERK
BY: GH

STATE OF ARIZONA,) 1 CA-CR 10-0550
)
Appellee,) DEPARTMENT D
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
CHRISTOPHER GEORGE THEODORE) Rule 111, Rules of the
LAMAR,) Arizona Supreme Court)
)
Appellant.)
)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. CR1996-011714

The Honorable Michael D. Jones, Judge

AFFIRMED

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

Bruce Peterson, Office of the Legal Advocate, Phoenix
By Kerri L. Chamberlin, Deputy Legal Advocate
Attorneys for Appellant

O R O Z C O, Judge

¶1 Christopher George Theodore Lamar (Appellant) appeals from the sentence imposed following remand. For the following reasons, we affirm.

¶2 Appellant was convicted of First Degree Murder, a Class one dangerous felony. In June 2010, the trial court sentenced Appellant to a term of imprisonment of natural life with no possibility of release, to be served concurrently with all other sentences already imposed and with a credit of 4,963 days for pre-sentence incarceration.¹

¶3 Appellant filed a timely notice of appeal. 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 entire appellate record, counsel found no arguable question of law that was not frivolous. Appellant was afforded the opportunity to file a supplemental brief in propria persona but did not do so.

¶4 Counsel asks this court to review the entire pertinent record for reversible error. *State v. Clark*, 196 Ariz. 530, 537, ¶ 30, 2 P.3d 89, 96 (App. 1999). 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.

¹ The natural life sentence for the murder conviction was ordered to be served concurrently with the sentence imposed for Appellant's kidnapping conviction.

(2003), 13-4031 (2010), and -4033.A.1. (2010).² After reviewing the pertinent portions of the record and having found no reversible error, we affirm Appellant's sentence.

FACTUAL AND PROCEDURAL HISTORY

¶15 In December 1999, a unanimous jury found Appellant guilty of first degree murder and kidnapping, a dangerous offense. The trial court issued a special verdict in June 2001 sentencing Appellant to death after considering both aggravating and mitigating circumstances. See A.R.S. § 13-703.B. (1996). The court found the State had proven beyond a reasonable doubt the existence of three aggravating circumstances that Appellant committed the offense: in expectation of pecuniary gain; in an especially cruel, heinous or depraved manner; and while Appellant was on supervised release from a law enforcement agency. See A.R.S. § 13-703.F.5., 6., 7. (1996).

¶16 The court found Appellant had not proven any statutory mitigating circumstances, but it did consider non-statutory mitigating circumstances, including "any aspect of the defendant's character, propensities on record and any of the circumstances of the offense." See A.R.S. § 13-703.G. (1996). The trial court found three mitigating factors which were proven by a preponderance of the evidence that Appellant had: mental

² We cite to the current version of the applicable statutes when no revisions material to this decision have since occurred.

health issues; as a child and adolescent, a dysfunctional family and a difficult home life, including neglect and the lack of a nurturing relationship with his mother; and demonstrated good character.

¶7 After considering both aggravating and mitigating factors, the trial court found that the mitigating factors did not outweigh the aggravating factors so as to create a call for leniency in sentencing. The court imposed the death sentence pursuant to A.R.S. § 13-704 (1996) for the first degree murder conviction and an aggravated term of twenty one years' imprisonment for the kidnapping conviction.

¶8 Both convictions were affirmed upon automatic appeal to the Arizona Supreme Court in July 2003. *State v. Lamar*, 205 Ariz. 431, 442, ¶ 56, 72 P.3d 831, 842 (2003). Appellant filed and was denied a Petition of Writ of Certiorari by the United States Supreme Court in March 2004.

¶9 In July 2005, the Arizona Supreme Court filed a supplemental opinion affirming Appellant's convictions but remanding his sentencing pursuant to *Ring v. Arizona*, 536 U.S. 584 (2002).³ *State v. Lamar*, 210 Ariz. 571, 574, ¶ 6, 115 P.3d

³ In *Ring v. Arizona*, the United States Supreme Court held that Arizona's capital sentencing scheme was unconstitutional because it allowed a judge, sitting without a jury, to determine the existence of aggravating circumstances necessary to impose the death penalty. *Ring*, 536 U.S. at 609. The Arizona legislature amended Arizona's sentencing scheme "to provide for

611, 614 (2005). Our supreme court vacated Appellant's death sentence and remanded to the trial court for re-sentencing pursuant to A.R.S. § 13-703 and 13-703.01. (Supp. 2003). *Id.* at 577, ¶ 27, 115 P.3d at 617. The supreme court affirmed the trial court's aggravated sentence for Appellant's kidnapping conviction. *Id.*

¶10 On remand for re-sentencing in November 2009, an impaneled jury found that the State had proven only two aggravating circumstances: that Appellant committed the offense while on authorized release from a law enforcement agency, and that Appellant committed the offense in an especially cruel manner. Because the jury was unable to reach a unanimous verdict on whether to impose a death sentence, the trial court declared a mistrial. Subsequently, a second jury was impaneled to re-try the penalty phase. The second jury also failed to reach a unanimous decision on the issue of Appellant's sentencing.

¶11 In June 2010, the trial court sentenced Appellant to a term of natural life to be served without the possibility of release, for Appellant's first degree murder conviction. The court also ordered the sentence of natural life to be served

jury trials on the existence of aggravating circumstances in capital cases." *State v. Fell*, 210 Ariz. 554, 556, ¶ 3, 115 P.3d 594, 596 (2005), citing 2002 Ariz. Sess. Laws, 5th Spec. Sess., ch. 1.

concurrently with any sentence Appellant received for any other convictions, including the kidnapping conviction. See A.R.S. § 13-703.01.K. (2002). Appellant received 4,963 days' credit for presentence incarceration.

¶12 Prior to the imposition of sentence, the trial court conducted a hearing for the purpose of considering aggravating and mitigating circumstances. The trial court stated it would consider the two aggravating circumstances found by the jury in the first mistrial in November 2009, as well as additional evidence the parties wanted to present that day.

¶13 The trial court found the State had proven two aggravating factors: Appellant committed the offense in an especially heinous, cruel or depraved manner and that Appellant had committed the offense while on authorized release from a law enforcement agency. See A.R.S. § 13-703.F.6., 7. (1996). The court also found that the record supported and Appellant had proven four mitigating circumstances, that Appellant had: been subjected to significant mental and physical abuse as a child and through his adolescence; suffered the economic and cultural deprivation of his neighborhood; very strong family support; and suffered a traumatic brain injury as a young man that affected his ability to understand and conform his conduct to the requirements of the law. See A.R.S. § 13-703.G. (1996). The trial court dismissed the other mitigating circumstances

offered, including Appellant's voluntary drug abuse, the sentences received by Appellant's co-defendants, and Appellant's claim of attempted rehabilitation. After considering the aggravating and mitigating circumstances, the trial court found that a life sentence was "a just sentence under Arizona law."

DISCUSSION

¶14 When reviewing the record, "we view the evidence in the light most favorable to supporting the verdict." *State v. Torres-Soto*, 187 Ariz. 144, 145, 927 P.2d 804, 805 (App. 1996).

¶15 The Special Verdict indicated that no pre-sentence report was prepared in this case. However, the trial court stated that it had reviewed case notes and had considered the two aggravating factors within the special verdict signed by the jury. It also stated that it considered any mitigating circumstances proven by Appellant and were supported in the record.

¶16 Both Appellant and counsel were present at the sentencing hearing and Appellant was given the opportunity to speak. Both Appellant and the State had opportunity to present evidence relevant to the determination of whether there was mitigation sufficiently substantial to call for leniency in sentencing. A.R.S. §§ 13-703.01.G. (2002), -752.G. (2009).

¶17 Following the presentation of evidence by the State and Appellant, the court imposed a legal sentence of natural

life to be served concurrently with all other sentences. We affirm this decision for the following reasons.

¶18 First, the sentence was a proper exercise of the trial court's authority after the failure of the second impaneled jury to reach a unanimous verdict. A.R.S. § 13-703.01.K. (2008);⁴ A.R.S. § 13-752.Q. (2009). "At the penalty phase, if the trier of fact is a jury and the jury is unable to reach a verdict, the court shall dismiss the jury and shall impanel a new jury. . . . If the new jury is unable to reach a unanimous verdict, the court shall impose a sentence of life or natural life on the defendant." A.R.S. § 13-703.01.K. (2008).

¶19 Second, the trial court properly considered both aggravating and mitigating circumstances in reaching its decision. When choosing whether to impose a sentence of life or natural life, the court "[m]ay consider any evidence introduced before sentencing or at any other sentencing proceeding [and] [s]hall consider the aggravating and mitigating circumstances listed in § 13-701." A.R.S. § 13-752.Q. (2009) (emphasis added). "In determining what sentence to impose, the court shall take into account the amount of aggravating circumstances and whether the amount of mitigating circumstances is sufficiently substantial to justify the lesser term." A.R.S. § 13-701.F. (2009).

⁴ Renumbered as A.R.S. § 13-752.K. (2010).

¶20 Furthermore, the aggravating and mitigating circumstances considered by the trial court in sentencing Appellant were authorized by the law which governed at the time Appellant committed the crime. A.R.S. § 1-246 (2002). The trial court only considered the two aggravating circumstances found by the first impaneled jury at the sentencing phase, which were decided under A.R.S. § 13-703.F. (1996). Mitigating factors considered by the court were considered and not limited to those enumerated in A.R.S. § 13-703.G. (1996).

¶21 Third, Appellant's guilty verdict alone supports judicial authority to render a term of natural life imprisonment without the possibility of release without any additional finding of fact. *Fell*, 210 Ariz. at 558, ¶ 15, 115 P.3d at 598. The jury's finding of guilt is a sufficient precondition to the trial judge's imposition of a natural life sentence. *Id.* at 557-58, ¶ 11, 115 P.3d at 597-98.

¶22 Finally, when a sentencing scheme places discretion with the trial court to impose a sentence within a specific range, an appellate court may review the decision for an abuse of discretion. *Id.* at 559 n.7, ¶ 18, 115 P.3d at 599 n.7. We find that the trial court's decision was not capricious, arbitrary, or the result of an inadequate factual investigation for an "intelligent exercise of the court's sentencing power."

Id., quoting *State v. Grier*, 146 Ariz. 511, 515, 707 P.2d 309, 313 (1985).

CONCLUSION

¶23 We have read and considered counsel's brief, carefully searched the entire pertinent record for reversible error and found none. *Clark*, 196 Ariz. at 541, ¶ 49, 2 P.3d at 100. The record indicates Appellant was present and represented by counsel at all critical stages of the proceedings, proceedings were conducted in compliance with Appellant's statutory and Constitutional rights, and in conformance with the Arizona Rules of Criminal Procedure. At sentencing, Appellant and his counsel were given an opportunity to speak and the court imposed a legal sentence.

¶24 Counsel's obligations pertaining to Appellant's representation in this appeal have ended. Counsel need do nothing more than inform Appellant 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). Appellant 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.⁵

¶25 For the above mentioned reasons, Appellant's sentence is affirmed.

/S/

PATRICIA A. OROZCO, Judge

CONCURRING:

/S/

PATRICIA K. NORRIS, Presiding Judge

/S/

JOHN C. GEMMILL, Judge

⁵ Pursuant to Rule 31.18.b, Appellant or his counsel have fifteen days to file a motion for reconsideration. On the Court's own motion, we extend the time to file such a motion to thirty days from the date of this decision.