

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: 06/14/2011
RUTH A. WILLINGHAM,
CLERK
BY: DLL

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) No. CA-CR 10-0587
)
Appellee,) DEPARTMENT B
)
v.) **MEMORANDUM DECISION**
)
FABIAN MARK WILLIAMS,) (Not for Publication -
) Rule 111, Rules of the
Appellant.) Arizona Supreme Court)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2009-141996-001 DT

The Honorable Julie P. Newell, Judge *Pro Tempore*

AFFIRMED

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

James J. Haas, Maricopa County Public Defender Phoenix
By Paul J. Prato, Deputy Public Defender
Attorneys for Appellant

J O H N S E N, Judge

¶1 This appeal was timely filed in accordance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), following Fabian Mark Williams's

conviction of aggravated assault, a Class 3 dangerous felony. Williams's counsel has searched the record on appeal and found no arguable question of law that is not frivolous. See *Smith v. Robbins*, 528 U.S. 259 (2000); *Anders*, 386 U.S. 738; *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999). Williams was given the opportunity to file a supplemental brief, but did not do so. Counsel now asks this court to search the record for fundamental error.

¶12 After reviewing the entire record, we affirm Williams's conviction and sentence.

FACTS AND PROCEDURAL HISTORY

¶13 The victim, Monica, grabbed Williams when he was preparing to urinate in a friend's closet.¹ Williams and Monica began fighting, and Williams grabbed a kitchen knife and stabbed Monica. The knife blade broke off from the handle, but Williams continued to strike Monica. The fight left Monica with injuries for which she later sought medical treatment.

¶14 A jury convicted Williams of aggravated assault, a Class 3 dangerous felony. The court imposed a mitigated sentence of six years in prison.

¹ Upon review, we view the facts in the light most favorable to sustaining the jury's verdict and resolve all inferences against Williams. *State v. Fontes*, 195 Ariz. 229, 230, ¶ 2, 986 P.2d 897, 898 (App. 1998).

¶15 Williams timely appealed. 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 -4033(A)(1) (2010).²

DISCUSSION

¶16 The record reflects Williams received a fair trial. He was represented by counsel at all stages of the proceedings against him and was present at all critical stages. The court held appropriate pretrial hearings.

¶17 The State presented both direct and circumstantial evidence sufficient to allow the jury to convict. Williams asked his counsel to suggest on appeal that the evidence was insufficient because the victim's statements were inconsistent. "Reversible error based on insufficiency of the evidence occurs only where there is a complete absence of probative facts to support the conviction." *State v. Scott*, 113 Ariz. 423, 424-25, 555 P.2d 1117, 1118-19 (1976). Monica testified Williams attacked her with a knife, a dangerous instrument. We cannot conclude there was insufficient evidence to convict Williams for aggravated assault.

¶18 Williams may mean to argue the victim was not credible because her statements to police varied in slight, immaterial

² Absent material revisions after the date of an alleged offense, we cite a statute's current version.

ways from her testimony at trial. The jury, however, is in the best position to judge the credibility of witnesses and weigh the evidence. *State v. Williams*, 209 Ariz. 228, 231, ¶ 6, 99 P.3d 43, 46 (App. 2004). We will not reweigh the evidence on appeal. *Id.*

¶19 Williams also asked counsel on appeal to suggest the superior court abused its discretion when it admitted a knife handle recovered from the scene of the crime into evidence because there was no "direct evidence linking . . . Williams to the knife handle." The knife handle was not admitted to prove it was the exact instrument used in the altercation, however. It was admitted as illustrative evidence, to demonstrate to the jury what the knife handle that was used in the attack looked like. See *State v. Mays*, 7 Ariz. App. 90, 92, 436 P.2d 482, 484 (1968) (pistol not been identified as the weapon used in assault was admitted to help jury determine if actual pistol used was a deadly weapon).

¶10 Finally, Williams asked counsel to suggest on appeal that his due process rights were violated because the police did not test the knife handle for fingerprints or DNA evidence. As noted, the State did not attempt to prove that the knife handle was the actual instrument used in the attack. Because the State

did not assert that Williams ever held the knife handle, fingerprints and DNA were irrelevant.

¶11 The jury was properly comprised of eight members with two alternates. The court properly instructed the jury on the elements of the charges, the State's burden of proof and the necessity of a unanimous verdict. The jury returned a unanimous verdict, which was confirmed by juror polling. The court received and considered a presentence report and addressed its contents during the sentencing hearing and imposed a legal sentence on the crime of which Williams was convicted.

CONCLUSION

¶12 We have reviewed the entire record for reversible error and find none. See *Leon*, 104 Ariz. at 300, 451 P.2d at 881.

¶13 After the filing of this decision, defense counsel's obligations in this appeal have ended. Defense counsel need do no more than inform Williams of the outcome of this appeal and his future options, 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, Williams has 30 days from the date of this decision to proceed, if he wishes, with a *pro per* motion for reconsideration.

Williams has 30 days from the date of this decision to proceed, if he wishes, with a *pro per* petition for review.

/s/
DIANE M. JOHNSEN, Judge

CONCURRING:

/s/
DONN KESSLER, Presiding Judge

/s/
SHELDON H. WEISBERG, Judge