

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: 05/31/2011
RUTH A. WILLINGHAM,
CLERK
BY: GH

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,)
) No. 1 CA-CR 10-0692
)
 Appellee,) DEPARTMENT D
)
 v.) **MEMORANDUM DECISION**
)
 TUYEN VAN VU, JR.,) (Not for Publication -
) Rule 111, Rules of the
 Appellant.) Arizona Supreme Court)
)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2008-170345-001 SE

The Honorable Christopher T. Whitten, Judge

AFFIRMED

Thomas C. Horne, Arizona 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 Spencer D. Heffel, Deputy Public Defender
Attorneys for Appellant

H A L L, Judge

¶1 Tuyen Van Vu, Jr. (defendant) appeals from his convictions and the sentences imposed. For the reasons set forth below, we affirm.

¶2 Defendant's appellate 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 that, after a diligent search of the record, he was unable to find any arguable grounds for reversal. This court granted defendant an opportunity to file a supplemental brief, which he has not done. See *State v. Clark*, 196 Ariz. 530, 537, ¶ 30, 2 P.3d 89, 96 (App. 1999).

¶3 We review for fundamental error, error that goes to the foundation of a case or takes from the defendant a right essential to his defense. See *State v. King*, 158 Ariz. 419, 424, 763 P.2d 239, 244 (1988). We view the evidence presented at trial in a light most favorable to sustaining the verdict. *State v. Cropper*, 205 Ariz. 181, 182, ¶ 2, 68 P.3d 407, 408 (2003).

¶4 Defendant was charged by indictment with: Count I: aggravated assault, a class three dangerous felony and domestic violence offense (victim Linh Van Vu), in violation of Arizona Revised Statutes (A.R.S.) section 13-1204(A)(1), (2) (Supp.

2010); and Count II: aggravated assault, a class three dangerous felony and domestic violence offense (victim Tuyen Van Vu, Sr.), in violation of A.R.S. § 13-1204(A)(1), (2).

¶15 The following evidence was presented at a bench trial. In November 2008, Tuyen Van Vu, Sr. rented a home from his daughter and son-in-law, Nhung and Thinh Dang. Tuyen Van Vu, Sr.'s sons, defendant, and Linh Van Vu, resided with him in the rental property.

¶16 On November 11, 2008, Thinh Dang was at the rental property to oversee the replacement of the carpet. Van Vu, Sr. was cooking in the kitchen when he heard arguing and he then saw defendant grab a knife from the kitchen and Linh, Thinh, and defendant ran outside. Tuyen Van Vu, Sr. heard Linh (who is deaf and mute) make a noise indicating he was hurt and Tuyen Van Vu, Sr. went outside and saw that Linh had been stabbed and fallen to the ground. Tuyen Van Vu, Sr. then attempted to take the knife away from defendant and his hand was cut during that struggle. Eventually, defendant placed the knife on the table.

¶17 Later that day, defendant was arrested and read his *Miranda*¹ rights in Vietnamese. Defendant was then interviewed by a certified Vietnamese speaking officer and admitted that he had stabbed his brother and acknowledged that his father was cut during their struggle over the knife.

¹ *Miranda v. Arizona*, 384 U.S. 436 (1966).

¶18 After a bench trial, the trial court found defendant guilty on Count I, aggravated assault, a class three dangerous felony and Count II, aggravated assault, a class three non-dangerous felony. At the sentencing hearing, the state moved to dismiss the allegation of dangerousness regarding Count II and the motion was granted. The trial court then sentenced defendant to the presumptive term of 7.5 years on Count I with 422 days of presentence incarceration credit and 5 years probation on Count II to be served consecutively to Count I.

¶19 We have read and considered counsel's brief and have searched the entire 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. Defendant was given an opportunity to speak before sentencing, and the sentence imposed was within statutory limits. Furthermore, based on our review of the record, there was sufficient evidence for the trial court to find that defendant committed the offenses for which he was convicted.

¶10 After the filing of this decision, counsel's obligations pertaining to defendant's representation in this appeal have ended. Counsel need do no more than inform defendant 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. See *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984). Defendant has thirty days from the date of this decision to proceed, if he desires, with a pro per motion for reconsideration or petition for review. Accordingly, defendant's convictions and sentences are affirmed.

_ / s / _____
PHILIP HALL, Judge

CONCURRING:

_ / s / _____
PATRICK IRVINE, Presiding Judge

_ / s / _____
JOHN C. GEMMILL, Judge