

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: 11/03/2011
RUTH A. WILLINGHAM,
CLERK
BY: GH

STATE OF ARIZONA,)
) No. 1 CA-CR 10-0887
)
 Appellee,) DEPARTMENT C
)
 v.) **MEMORANDUM DECISION**
)
 NAHUM JOSUE PINO,) (Not for Publication -
) Rule 111, Rules of the
 Appellant.) Arizona Supreme Court)
)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2009-155388-001 DT

The Honorable Samuel A. Thumma, 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 Kathryn L. Petroff, Deputy Public Defender
Attorneys for Appellant

H A L L, Judge

¶1 Nahum Josue Pino (defendant) appeals from his conviction and the sentence 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, she 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 information with one count of criminal trespass in the first degree, a class six felony, in violation of Arizona Revised Statutes section 13-1504(A)(1), (B) (Supp. 2010).

¶15 The following evidence was presented at trial. On the morning of July 10, 2009, E.W., a paraplegic, and her nine-year-old son left their home to run several errands. When they returned home a few hours later, E.W. noticed that the side gate of her home was open. When she went around back, she also noticed that the back door was open. E.W. attempted to call 9-1-1 on her cellular phone, but was unsuccessful.

¶16 Remaining outside the gate, but leaning in, E.W. then asked "[I]s anybody there[?]" Hearing no response, E.W. decided to go into the house to grab the house phone. While attempting to reach the landline, E.W. heard movement from her computer chair, looked up, and saw defendant. She asked "[W]hat [] are you doing in my house? Don't move." Defendant responded "I'm looking for Benjamin." E.W. told defendant "[t]here is no Benjamin here. Don't move." As she rolled back to grab the landline, defendant shoved, punched, and pushed her to make his way out of the house and then fled.

¶17 At trial, E.W. testified that, several weeks before this event, she had observed defendant "walking around" her house. Defendant also came to the front door and asked for Benjamin. E.W. reported the matter to the police.

¶18 On August 13, 2009, G.W., E.W.'s husband, observed defendant "walking down at the end of [his] cul-de-sac" and recognized him as the same individual who had come to his front

door asking for Benjamin. G.W. immediately got in his van, followed defendant, and watched him walk into another home. G.W. then knocked on the front door of the home defendant entered, and when defendant opened the door, G.W. said "Benjamin, I found you." Defendant shut the front door and ran out his side door and down the street. G.W. called 9-1-1 and then continued following defendant until the police arrived and placed him under arrest.

¶19 On August 19, 2009, Detective Michael Ross, of the Phoenix Police Department, went to E.W.'s home and presented her with a photo line-up. "Almost immediately," E.W. picked out defendant from the line-up.

¶10 After a three-day trial, the jury found defendant guilty as charged. The trial court found that defendant had two historical prior felony convictions and sentenced him to a slightly aggravated term of 4.25 years in prison with 426 days of presentence incarceration credit.

¶11 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 were within statutory limits. Furthermore, based on our review of the

record, there was sufficient evidence for the jury to find that defendant committed the offense for which he was convicted.

¶12 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 conviction and sentence are affirmed.

_ / s /
PHILIP HALL, Judge

CONCURRING:

_ / s /
MICHAEL J. BROWN, Presiding Judge

_ / s /
PATRICIA K. NORRIS, Judge