

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz.R.Sup.Ct. 111(c); ARCAP 28(c);
Ariz.R.Crim.P. 31.24



DIVISION ONE
FILED: 12/29/2011
RUTH A. WILLINGHAM,
CLERK
BY: GH

**IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE**

STATE OF ARIZONA,

Appellee,

v.

CARLOS GERARDO LUNA,

Appellant.

1 CA-CR 11-0016

DEPARTMENT A

MEMORANDUM DECISION

(Not for Publication -
Rule 111, Rules of the
Arizona Supreme Court)

Appeal from the Superior Court in Maricopa County

Cause No. CR 2008-157999-001 DT

The Honorable Daniel G. Martin, Judge

AFFIRMED

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

Phoenix

Natalee Segal
Attorney for Appellant

Phoenix

I R V I N E, Judge

¶1 This appeal is filed in accordance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969). Counsel for Carlos Gerardo Luna

("Luna") asks this Court to search the record for fundamental error. Luna was given an opportunity to file a supplemental brief in propria persona. He has not done so. After reviewing the record, we affirm Luna's conviction and sentence for negligent homicide.

FACTS AND PROCEDURAL HISTORY

¶2 We view the facts in the light most favorable to sustaining the trial court's judgment and resolve all reasonable inferences against Luna. *State v. Fontes*, 195 Ariz. 229, 230, ¶ 2, 986 P.2d 897, 898 (App. 1998). On the night of September 14, 2008, Luna was drinking alcohol with M.Z. and the victim. At some point late in the evening, Luna and the victim stepped outside of the home together. About five minutes later, Luna opened the front door and told A.L. to call an ambulance.

¶3 A.L. ran outside and saw the victim lying in the street covered in blood. A.L. also saw Luna leaving the scene in his vehicle. Although the victim was making a shallow breathing sound, he was not responsive. The victim was rushed to the hospital, where he was later pronounced dead.

¶4 The State charged Luna with second-degree murder. Luna testified at trial that the victim hit him first and that he was acting in self defense. Luna further testified that he does not remember how many times he hit the victim. Luna was convicted of the lesser-included offense of negligent homicide. The jury

found two aggravating factors: (1) the offense involved the infliction or threatened infliction of serious physical injury and (2) Luna fled from the scene of the crime.

¶15 The trial court conducted the sentencing hearing in compliance with Luna's constitutional rights and Rule 26 of the Arizona Rules of Criminal Procedure. The trial court sentenced Luna to the presumptive term of 2.5 years in prison. Luna received credit for 340 days presentence incarceration.

DISCUSSION

¶16 We review Luna's conviction and sentence for fundamental error. See *State v. Gendron*, 168 Ariz. 153, 155, 812 P.2d 626, 628 (1991). Counsel for Luna has advised this Court that after a diligent search of the entire record, she has found no arguable question of law. We have read and considered counsel's brief and fully reviewed the record for reversible error. See *Leon*, 104 Ariz. at 300, 451 P.2d at 881. We find none.

¶17 All of the proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure. So far as the record reveals, Luna was represented by counsel at all stages of the proceedings, and the sentence imposed was within the statutory limits. We decline to order briefing, and we affirm Luna's conviction and sentence.

¶18 Upon the filing of this decision, defense counsel shall inform Luna of the status of his appeal and of his future options. Defense counsel has no further obligations 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). Luna shall have thirty days from the date of this decision to proceed, if he desires, with a pro per motion for reconsideration or petition for review.

CONCLUSION

¶19 We affirm.

/s/

PATRICK IRVINE, Judge

CONCURRING:

/s/

ANN A. SCOTT TIMMER, Presiding Judge

/s/

DANIEL A. BARKER, Judge