

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

FILED BY CLERK

JUL 15 2013

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2012-0268
)	DEPARTMENT A
Appellee,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
TIMOTHY LAMAR WILLS,)	the Supreme Court
)	
Appellant.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20101347001

Honorable Howard Fell, Judge Pro Tempore

AFFIRMED AS CORRECTED

Lori J. Lefferts, Pima County Public Defender
By Frank P. Leto

Tucson
Attorneys for Appellant

HOWARD, Chief Judge.

¶1 Appellant Timothy Wills was convicted following a jury trial of misdemeanor assault, a lesser-included offense of the charged offense of aggravated assault, and reckless aggravated assault resulting in serious physical injury, domestic violence. The trial court suspended the imposition of sentence and placed Wills on probation for three years on both counts. On appeal, counsel has filed a brief in

compliance with *Smith v. Robbins*, 528 U.S. 259 (2000), *Anders v. California*, 386 U.S. 738 (1967), and *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999), avowing he reviewed the record and could find no meritorious or arguable issue to raise and requesting that this court review the record for fundamental error. Wills has not filed a supplemental brief.

¶2 Based on Wills's shooting his girlfriend K.M., he was charged with aggravated assault with a deadly weapon, aggravated assault causing serious physical injury, both domestic violence offenses, and attempted first-degree murder. The state dismissed the attempted murder charge on the first day of trial. Viewed in the light most favorable to sustaining the verdicts, there was sufficient evidence supporting the jury's verdicts. *See State v. Haight-Gyuro*, 218 Ariz. 356, ¶ 2, 186 P.3d 33, 34 (App. 2008) (evidence must be viewed in light most favorable to affirming convictions). Based on the evidence, reasonable jurors could find Wills had verbally threatened the victim while holding a rifle, subsequently trying to hit her with the butt of the rifle, committing assault in violation of A.R.S. § 13-1203.

¶3 The evidence also established that after assaulting K.M. and walking out of her bedroom and into the living room, Wills returned to the bedroom and shot her under the left arm at the rib cage with a .22 caliber rifle. Evidence established Wills committed aggravated assault based on reckless conduct that caused serious physical injury, in violation of A.R.S. § 13-1204(A)(1). As a result of the shooting, K.M.'s lungs collapsed, her spine was fractured, and the bullet remains lodged in her body; she is paralyzed from the waist down on her left side; her mobility has been affected permanently and she is,

for the most part, confined to a wheelchair, only able to walk slowly with the aid of a walker; and, her bowel and kidney functions have been permanently affected, making it difficult for her to urinate and move her bowels. We have reviewed the entire record and have found no error that can be characterized as fundamental and prejudicial. *See State v. Henderson*, 210 Ariz. 561, ¶¶ 19, 26, 115 P.3d 601, 607, 608-09 (2005).

¶4 We have reviewed the entire record and, although we have found neither trial error requiring reversal nor sentencing error, requiring us to disturb the terms of probation, we have discovered that the sentencing minute entry contains the following provision: “IT IS FURTHER ORDERED, pursuant to the plea, all remaining counts and allegations be dismissed as to this cause number only.” Because Wills was not convicted pursuant to a plea agreement, the court’s inclusion of this provision was in error; the minute entry is therefore corrected, striking that portion of the order. In all other respects the convictions and the terms of probation are affirmed.

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

CONCURRING:

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

/s/ Michael Miller
MICHAEL MILLER, Judge