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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA, Appellee, v. VINCENTE DANIEL QUINTANA, Appellant.	)	2 CA-CR 2012-0494 DEPARTMENT A MEMORANDUM DECISION Not for Publication Rule 111, Rules of the Supreme Court

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20120697001

Honorable Javier Chon-Lopez, Judge

AFFIRMED AS CORRECTED

Lori J. Lefferts, Pima County Public Defender
By Kristine Maish
Tucson
Attorneys for Appellant

V Á S Q U E Z, Presiding Judge.

¶1 Appellant Vincente Quintana was charged with and convicted after a jury trial of six counts of aggravated assault (domestic violence), three counts of sexual assault of a spouse, one count of attempted sexual assault of a spouse, and one count of kidnapping (domestic violence). Appointed counsel has filed a brief in compliance with *Anders v. California*, 386 U.S. 738 (1967), *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), and *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999), stating she has reviewed the entire record and has found no meritorious issues to raise on appeal. She suggests we consider as a possible issue, however, whether A.R.S. § 13-1406(C) permitted concurrent prison terms on the three counts of sexual assault, notwithstanding language in the statute she concedes establishes otherwise. Quintana has not filed a supplemental brief.

¶2 The charges arose out of a series of incidents that occurred the morning of February 12, 2012, during which Quintana choked his wife repeatedly, struck her, pulled her hair, and forcibly engaged in sexual intercourse with her, both vaginal and anal. After finding Quintana guilty of the charged offenses, the jury found three aggravating circumstances: the infliction or threatened infliction of serious physical injury, emotional harm to the victim, and commission of the offense in the presence of a minor child, the victim's and Quintana's three-year-old son. The trial court noted these factors at the sentencing hearing and found mitigating circumstances including Quintana's young age, his expressed remorse, his dysfunctional, "traumatic upbringing," his family support, and the lack of prior felonies. The court then sentenced him to concurrent, presumptive

prison terms of 2.5 years on counts one through five (aggravated assault, domestic violence, based on impeding normal breathing or circulation of blood, in violation of A.R.S. § 13-1204(B)(1) and (2)); seven years' probation on count six (kidnapping) to commence after Quintana's release from the Department of Corrections; minimum prison terms of 5.25 years on counts seven, eight, and nine (sexual assault), with the term on count seven to be concurrent with the terms of counts one through five, but "consecutive to each other by statute," with the term on count eight following the sentence on count seven and the term on count nine following the term on count eight; a concurrent, presumptive prison term of 3.5 years for count ten (attempted sexual assault); and, the presumptive, six-year term of imprisonment on count eleven (aggravated assault), to be served concurrently with the terms on counts one through five, ten, and seven.[1]

¶3 Referring to legislative history, counsel asks us to look beyond the plain language of the statute and consider whether it is possible the legislature intended the mandatory sentences prescribed by § 13-1406(C) to apply to serial rapists and cases

[1]We note that the sentencing minute entry incorrectly states that the sentence on count nine was 2.25 years' imprisonment, rather than the 5.25-year term the trial court had imposed on all three sexual assault convictions. "Upon finding a discrepancy between the oral pronouncement of sentence and a minute entry, a reviewing court must try to ascertain the trial court's intent by reference to the record." *State v. Stevens*, 173 Ariz. 494, 496, 844 P.2d 661, 663 (App. 1992). Generally, when there is such a conflict, the oral pronouncement controls. *State v. Whitney*, 159 Ariz. 476, 487, 768 P.2d 638, 649 (1989). Although we do not correct error we discover on appeal that is to a defendant's detriment absent a cross-appeal by the state, *State v. Dawson*, 164 Ariz. 278, 281-82, 792 P.2d 741, 744-45 (1990), this error was not to Quintana's detriment; his sentence was always intended to be 5.25 years' imprisonment, not 2.25, and the error is clearly clerical. We, therefore, correct it accordingly. *See State v. Ovante*, 231 Ariz. 180, ¶ 39, 291 P.3d 974, 982 (2013) (correcting analogous error).

involving multiple victims and multiple incidents rather than what was essentially one incident involving one victim and multiple acts. She suggests the trial court "may have" imposed concurrent sentences on the sexual assault convictions had it known it had the discretion to do so.

¶4 "When the plain text of a statute is clear and unambiguous there is no need to resort to other methods of statutory interpretation to determine the legislature's intent because its intent is readily discernible from the face of the statute." *State v. Christian*, 205 Ariz. 64, ¶ 6, 66 P.3d 1241, 1243 (2003). Section 13-1406 applies to and contains special sentencing provisions for sexual assault, and it provides the following in subsection (C): "The sentence imposed on a person for a sexual assault shall be consecutive to any other sexual assault sentence imposed on the person at any time." Because the language of § 13-1406(C) is clear and unambiguous, we do not consider its legislative history in discerning its meaning and the legislature's intent. *See Christian*, 205 Ariz. 64, ¶ 6, 66 P.3d at 1243; *see also State v. Lewis*, 224 Ariz. 512, ¶ 17, 233 P.3d 625, 628 (App. 2010) ("'[S]hall' typically indicates a mandatory provision."). Each of the three charges of sexual assault was based on a distinct act that was physically and temporally distinguishable from the others. Section 13-1406(C) mandated consecutive sentences on the sexual assault counts; therefore, the trial court did not err in ordering the sentences be served consecutively and correctly noted it was to impose consecutive terms under the statute.

¶5 We have reviewed the record as requested for fundamental error and have found none. The evidence supports the jury's verdicts, and the sentences were both lawful and imposed in a lawful matter. Therefore, we affirm the convictions and the sentences, correcting the sentencing minute entry as provided herein.

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

CONCURRING:

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

/s/ Michael Miller
MICHAEL MILLER, Judge