

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

LAWRENCE PAUL HARTOON,
Appellant.

No. 2 CA-CR 2015-0035
Filed January 27, 2016

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION

See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.24.

Appeal from the Superior Court in Pima County
No. CR20141577001
The Honorable Kenneth Lee, Judge

AFFIRMED

COUNSEL

Dean Brault, Pima County Legal Defender
By Robb P. Holmes, Assistant Legal Defender, Tucson
Counsel for Appellant

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MEMORANDUM DECISION

Presiding Judge Howard authored the decision of the Court, in which Judge Espinosa and Judge Staring concurred.

H O W A R D, Presiding Judge:

¶1 After a jury trial, Lawrence Hartoon was convicted of aggravated assault with a deadly weapon or dangerous instrument, a dangerous offense. He was sentenced to a ten-year prison term.

¶2 Hartoon's previous counsel¹ has filed a brief in compliance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999), asserting she reviewed the record but found no arguable issue to raise on appeal. Consistent with *Clark*, 196 Ariz. 530, ¶ 32, 2 P.3d at 97, she provided "a detailed factual and procedural history of the case with citations to the record" and asks this court to search the record for error. Hartoon has filed a supplemental brief, asserting his convictions are invalid because his indictment "fails to cite a violation" of the aggravated assault statute and the grand jury transcript does not contain an "enumerated statutory violation of law." He also argues his enhanced sentence is improper because his historical prior felony conviction was not alleged in the indictment.

¶3 Viewing the evidence in the light most favorable to sustaining the verdicts, *see State v. Tamplin*, 195 Ariz. 246, ¶ 2, 986 P.2d 914, 914 (App. 1999), sufficient evidence supports the jury's verdicts. During a fight with the victim over a cellular telephone,

¹ At the time the *Anders* brief was filed, Hartoon was represented by different counsel. Counsel has since withdrawn due to a conflict of interest, and this court appointed current counsel in her stead.

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Hartoon stabbed him in the chest with a knife. A.R.S. §§ 13-105(12), (13); 13-1203(A)(1); 13-1204(A)(2).

¶4 The bases for Hartoon’s claims in his supplemental brief concerning the indictment and grand jury transcript are not entirely clear. He appears to argue that the indictment and grand jury presentation were deficient because they did not sufficiently describe his offense or contain a sufficient reference to the governing statute. But Hartoon waived any defects in the indictment or grand jury proceeding by failing to raise an objection below. See *Ariz. R. Crim. P. 12.9(b), 16.1(c)*; see also *State v. Anderson*, 210 Ariz. 327, ¶ 18, 111 P.3d 369, 378 (2005); *State v. Merolie*, 227 Ariz. 51, ¶ 10, 251 P.3d 430, 432 (App. 2011). In any event, we would find no error. The indictment clearly describes a violation of § 13-1204(A)(2), as does the grand jury presentation; the indictment cites § 13-1204(A)(2) and the grand jury returned a true bill stating Hartoon had committed “aggravated assault, deadly weapon/dangerous instrument.”

¶5 And, although Hartoon is correct that the state did not allege in the indictment that he had a previous conviction for a dangerous felony, the state is not required to do so. Instead, in compliance with A.R.S. § 13-704(L), it alleged more than twenty days before trial that the charged offense was dangerous and that Hartoon had a historical prior felony conviction for a dangerous offense. And the evidence supports the court’s finding that Hartoon had previously been convicted of manslaughter. Hartoon’s sentence was within the statutory range and properly imposed. A.R.S. §§ 13-704(D), 13-1204(D).

¶6 Pursuant to our obligation under *Anders*, we have searched the record for fundamental error and found none. See *State v. Fuller*, 143 Ariz. 571, 575, 694 P.2d 1185, 1189 (1985) (*Anders* requires court to search record for fundamental error). And we have rejected the arguments Hartoon raised in his supplemental brief. Accordingly, we affirm his conviction and sentence.