

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION TWO

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THE STATE OF ARIZONA,  
*Appellee,*

*v.*

GABRIEL ORTIZ,  
*Appellant.*

No. 2 CA-CR 2016-0191  
Filed January 5, 2017

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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NOT FOR PUBLICATION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.*

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Appeal from the Superior Court in Pima County  
No. CR20154027001  
The Honorable Richard D. Nichols, Judge

**AFFIRMED**

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COUNSEL

Steven R. Sonenberg, Pima County Public Defender  
By Abigail Jensen, Assistant Public Defender, Tucson  
*Counsel for Appellant*

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MEMORANDUM DECISION

Presiding Judge Howard authored the decision of the Court, in which Chief Judge Eckerstrom and Judge Vásquez concurred.

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H O W A R D, Presiding Judge:

¶1 Following a jury trial, appellant Gabriel Ortiz was convicted of aggravated assault with a deadly weapon/dangerous instrument, a class three felony, a repetitive felony based on two historical prior felony convictions, and simple assault, a class one misdemeanor. The trial court sentenced him to a mitigated prison term of 7.5 years for the aggravated assault conviction and time served in jail for simple assault.

¶2 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). She avows that “she has reviewed the entire record and has been unable to find any arguably meritorious issue to raise on appeal,” requesting that this court review the record for fundamental error. Ortiz has not filed a supplemental brief.

¶3 Viewed in the light most favorable to sustaining the verdicts, the evidence and reasonable inferences therefrom established the following. See *State v. Miles*, 211 Ariz. 475, ¶ 2, 123 P.3d 669, 670 (App. 2005). Ortiz and B.G. became involved in a verbal altercation, which appeared to be resolved after B.G. showed Ortiz he had a pocket knife, the two men shook hands, and Ortiz left the scene. Ortiz returned with his codefendant, Jason Kunk, kicked a bag out of B.G.’s hand and began fighting with him, yelling at Kunk to “pis-whip” the victim; Kunk then repeatedly hit B.G. in the head with a handgun as Ortiz and B.G. wrestled.

¶4 There was ample evidence to support the jury’s determination that Ortiz was guilty of simple assault, a lesser-included offense of the charged offense of aggravated assault based on a head laceration B.G. sustained when struck by the handgun, in

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violation of A.R.S. § 13-1203(A)(1), and aggravated assault with a deadly weapon or dangerous instrument, based on the blows to B.G.'s head, in violation of A.R.S. § 12-1204(A)(2). The record also contains sufficient evidence to support the trial court's finding that Ortiz previously had been convicted of felonies in four causes, two of which were historical prior felony convictions for purposes of sentencing. The enhanced, mitigated, 7.5-year prison term was within the statutory parameters, *see* A.R.S. § 13-703(C), (J), and was imposed in a lawful manner. The same is true with respect to the jail term deemed already served for simple assault. *See* A.R.S. § 13-707(A)(1).

¶5 As requested, we have reviewed the entire record for fundamental error but have found none. We therefore affirm the convictions and the sentences imposed.