

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

JUAN GABRIEL RAMIREZ,
Appellant.

No. 2 CA-CR 2016-0237
Filed February 13, 2017

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NOT FOR PUBLICATION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 Pinal County
No. S1100CR201501268
The Honorable Kevin D. White, Judge

AFFIRMED

COUNSEL

Rowley Long & Simmons PLLC, Mesa
By Matthew S. Long
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.

H O W A R D, Presiding Judge:

¶1 Following a jury trial, Juan Ramirez was convicted of three counts of child molestation and five counts of sexual conduct with a minor; five of these counts were found to be dangerous crimes against children. The trial court sentenced Ramirez to a combination of concurrent and consecutive, presumptive prison terms totaling fifty-seven years. Counsel 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 (1999), avowing he reviewed the entire record and found no non-frivolous issue to raise on appeal, and requesting that this court review the record for fundamental error. Ramirez has not filed a supplemental brief.

¶2 Viewed in the light most favorable to sustaining the verdicts, see *State v. Tamplin*, 195 Ariz. 246, ¶ 2, 986 P.2d 914, 914 (App. 1999), the evidence, which included testimony by K.E., her mother, and Ramirez, as well as a recording of a conversation between Ramirez and the mother after she confronted him about having molested K.E., established the following. On two separate occasions when K.E. was under the age of fifteen, Ramirez had K.E. straddle him and rub against his erection; had sexual contact with her by placing his penis against her vulva; had K.E. perform oral sex on him; and had penile-sexual intercourse with her. K.E. testified about two other occasions, when she was fifteen or sixteen years old, on which Ramirez had penile-vaginal intercourse with her, and one occasion on which she performed oral sex on him. There was sufficient evidence supporting the eight counts of which he was found guilty.

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¶3 Additionally the sentences imposed were in accordance with the statutes and were imposed in a lawful manner.¹ We have reviewed the entire record for fundamental error but have found none. We therefore affirm Ramirez's convictions and the sentences imposed.

¹Ramirez was not charged until 2015 for offenses that he had committed between 2002 and 2005. The charging documents (notice of supervening indictment) and the sentencing minute entry cite A.R.S. § 13-705 with respect to sentencing for the five offenses charged as dangerous crimes against children (DCAC), rather than its former version, A.R.S. § 13-604.01, which existed at the time he had committed the offenses. *See* 2008 Ariz. Sess. Laws, ch. 301, §§ 17, 29. But in all material respects, the provisions are the same and the sentences were imposed in accordance with the substantive terms of the statutes in effect at the time of the offenses. *See* 2008 Ariz. Sess. Laws ch. 195, § 1. Ramirez thus had notice that the state was charging five of the eight counts as DCAC offenses. Similarly, the concurrent, one-year sentences on the final three counts, class six felonies, were consistent with the general sentencing provisions applicable at the time of the offenses. *See* A.R.S. § 13-702(D). *See* 2008 Ariz. Sess. Laws ch. 301, § 24.