

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

FIRMAN M. BINGHAM,
Appellant.

No. 2 CA-CR 2016-0415
Filed September 29, 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NOT FOR PUBLICATION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. S1100CR201600867
The Honorable Kevin D. White, Judge

AFFIRMED AS CORRECTED

COUNSEL

Flores & Clark, PC, Globe
By Daisy Flores
Counsel for Appellant

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MEMORANDUM DECISION

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

V Á S Q U E Z, Presiding Judge:

¶1 After a jury trial, Firman Bingham was convicted of aggravated assault causing temporary but substantial disfigurement, temporary but substantial loss or impairment of any body organ or part, or a fracture of any body part. The trial court sentenced him to an enhanced, minimum, eight-year prison term.

¶2 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 (App. 1999), asserting she has reviewed the record but found no arguably meritorious issue to raise on appeal. Consistent with *Clark*, 196 Ariz. 530, ¶ 32, 2 P.3d at 97, she has provided “a detailed factual and procedural history of the case with citations to the record” and asked this court to search the record for fundamental error. Bingham has not filed a supplemental brief.

¶3 Viewing the evidence in the light most favorable to sustaining the jury’s verdict, *see State v. Tamplin*, 195 Ariz. 246, ¶ 2, 986 P.2d 914, 914 (App. 1999), sufficient evidence supports it here. In December 2015, Bingham, an inmate at a private correctional facility, punched another inmate several times, causing the victim to suffer a concussion. *See* A.R.S. §§ 13-1203(A), 13-1204(A)(3). The record supports the trial court’s finding that Bingham had two historical prior felony convictions. His sentence is within statutory limits and was imposed in a lawful manner. *See* A.R.S. §§ 13-703(C), (J), 13-1204(E).

¶4 The sentencing minute entry, however, states that Bingham’s sentence “shall run consecutive to the term of

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imprisonment the defendant is currently serving” for an out-of-state conviction. The trial court awarded presentence incarceration credit and stated at sentencing that the sentence would run concurrently to Bingham’s existing sentence. We therefore correct the sentencing minute entry to reflect that Bingham’s sentence is to be served concurrently to the out-of-state sentence he is serving. *See State v. Hanson*, 138 Ariz. 296, 304-05, 674 P.2d 850, 858-59 (App. 1983) (“Where there is a discrepancy between the oral sentence and the written judgment, the oral pronouncement of sentence controls.”); *see also State v. Lopez*, 230 Ariz. 15, n.2, 279 P.3d 640, 643 n.2 (App. 2012) (“When we can ascertain the trial court’s intent from the record, we need not remand for clarification.”); *State v. Vandever*, 211 Ariz. 206, ¶ 16, 119 P.3d 473, 477 (App. 2005) (appellate court authorized to correct inadvertent error in sentencing minute entry).

¶5 Pursuant to our obligation under *Anders*, we have searched the record for fundamental, reversible error and found none. Accordingly, we affirm Bingham’s conviction and sentence.