

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

DANIEL JAMES BARRAZA SR.,
Appellant.

No. 2 CA-CR 2019-0046
Filed January 16, 2020

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NOT FOR PUBLICATION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. 31.19(e).

Appeal from the Superior Court in Pima County
No. CR20172480001
The Honorable Christopher Browning, Judge

AFFIRMED IN PART; VACATED IN PART

COUNSEL

Robert A. Kerry, Tucson
Counsel for Appellant

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MEMORANDUM DECISION

Chief Judge Vásquez authored the decision of the Court, in which Presiding Judge Staring and Judge Brearcliffe concurred.

V Á S Q U E Z, Chief Judge:

¶1 After a jury trial, Daniel Barraza Sr. was convicted of five counts of sexual abuse of a minor under the age of fifteen, six counts of child molestation, and two counts of sexual conduct with a minor twelve years of age or younger. The trial court sentenced him to concurrent and consecutive prison terms, including two consecutive terms of life imprisonment without the possibility of release for at least thirty-five years. Counsel has filed a brief in compliance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Clark*, 196 Ariz. 530 (App. 1999), stating he reviewed the record but found “[n]o arguable question of law” to raise on appeal and asking this court to review the record for error. Barraza has not filed a pro se supplemental brief.

¶2 Viewed in the light most favorable to sustaining the jury’s verdict, *see State v. Tamplin*, 195 Ariz. 246, ¶ 2 (App. 1999), the evidence is sufficient as to all counts here save for one count of child molestation, which we discuss below, *see* A.R.S. §§ 13-1404(A), 13-1405(A), 13-1410(A). M.O. testified that Barraza, her step-grandfather, had sexual contact with her when she was between six and nine years old, including: touching her breasts on at least two occasions, touching her genitals at least twice, having her touch his penis, placing his mouth on her vagina, and placing his penis in her vagina. Her younger sister, K.O., testified Barraza had, during roughly the same period, touched her breasts at least twice and touched her genitals once. A.F., the other victims’ step-cousin, testified Barraza had touched her breasts and genitals when she was between eleven and fifteen years old. The sentences imposed are within the statutory range. *See* A.R.S. §§ 13-705(A), (D), (F), 13-1404(C), 13-1405(B), 13-1410(B).

¶3 In our review of the record pursuant to *Anders*, we identified a non-frivolous claim concerning the sufficiency of the evidence supporting one of Barraza’s convictions of child molestation, specifically count eleven, which referred to “the last time” he had touched K.O.’s genitals. We

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ordered the parties to file supplemental briefs addressing this issue. We review de novo the sufficiency of the evidence to support a conviction. *State v. Dansdill*, 246 Ariz. 593, ¶ 19 (App. 2019). We must determine whether “any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *State v. West*, 226 Ariz. 559, ¶ 16 (2011) (quoting *State v. Mathers*, 165 Ariz. 64, 66 (1990)). We will only reverse if no substantial evidence supports the conviction. *State v. Rivera*, 226 Ariz. 325, ¶ 3 (App. 2011).

¶4 As Barazza correctly observes in his supplemental brief, K.O. testified Barazza had touched her genitals only one time, and there was no contrary evidence suggesting he had touched her genitals on more than one occasion. The state did not file a responsive brief, and we accept its confession of error. See *State v. Healer*, 246 Ariz. 441, n.5 (App. 2019) (“Generally, failure to file an answering brief constitutes confession of error.”).

¶5 Pursuant to our obligation under *Anders*, we have searched the record for error and found none save the insufficiency of the evidence to support count eleven. Accordingly, we vacate Barazza’s conviction and sentence for that count and affirm his remaining convictions and sentences.