IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

SAMUEL ORTEGA-TAPIA,
Appellant.

No. 2 CA-CR 2019-0189
Filed June 30, 2020

Appeal from the Superior Court in Pinal County
No. S1100CR201703306
The Honorable Jason R. Holmberg, Judge

AFFIRMED

COUNSEL

Rosemary Gordon Pánuco, Tucson
Counsel for Appellant

MEMORANDUM DECISION

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

E C K E R S T R O M, Judge:

¶1 After a jury trial, Samuel Ortega-Tapia was convicted of assault, resisting arrest, and two counts of aggravated assault on a peace officer. The trial court sentenced him to time served for the assault and to presumptive, concurrent terms of imprisonment, the longest of which was five years, for the other three offenses.

¶2 On appeal, counsel has filed a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), and *State v. Clark*, 196 Ariz. 530 (App. 1999), asserting she has reviewed the record and has been "unable to find any unresolved non-frivolous issue to raise." In her brief, however, she has identified three potential issues—the sufficiency of the evidence, Ortega-Tapia's competence to stand trial, and his prior felony convictions and sentencing—ultimately concluding no error occurred.[1] She asks this court to search the record for reversible error. Ortega-Tapia has not filed a supplemental brief.

¶3 We review the sufficiency of the evidence de novo, viewing the evidence in the light most favorable to sustaining the jury's verdicts. *State v. West*, 226 Ariz. 559, ¶ 15 (2011). The evidence is sufficient here. *See* A.R.S. §§ 13-1203(A)(3), 13-1204(A)(8)(a), 13-2508(A). In November 2017, two uniformed officers responded to a domestic altercation involving Ortega-Tapia. After one officer informed him there was a warrant for his arrest and he was being detained, the officer reached for his wrists to apply handcuffs, but Ortega-Tapia pulled away, saying he "did nothing wrong" and "was not going with [them]." A struggle ensued with Ortega-Tapia "violently" pushing and pulling the officers, despite their repeated commands to stop resisting. A third uniformed officer arrived, and, when

[1]We caution counsel to more carefully consider in the future whether to file an *Anders* brief or one based on the merits under Rule 31.10, Ariz. R. Crim. P.

he informed Ortega-Tapia that he was under arrest, Ortega-Tapia yelled again that he "did not do anything wrong," pushed the officer, and ripped his police radio off his vest. Ortega-Tapia continued to push and drag the officers, who were able to handcuff him only after deploying a Taser on him three times.

¶4 We review the trial court's competency determinations for an abuse of discretion, considering the facts in the light most favorable to sustaining that court's finding. *State v. Lewis*, 236 Ariz. 336, ¶ 8 (App. 2014). The court did not abuse its discretion here. On the first day of trial, when defense counsel orally requested a competency evaluation pursuant to Rule 11, Ariz. R. Crim. P., Ortega-Tapia displayed an understanding of the proceedings and an ability to assist in his defense. *See* A.R.S. § 13-4501(2). Although he may have appeared confused at times, it was based on a misunderstanding of the law and the strength of his case, as the court noted.

¶5 We review de novo whether the trial court applied the correct sentencing statute. *State v. Joyner*, 215 Ariz. 134, ¶ 5 (App. 2007). No error occurred here. The record establishes that Ortega-Tapia was on probation at the time he committed the instant offenses and that he had two prior historical felony convictions. The sentences imposed are within the statutory ranges. *See* A.R.S. §§ 13-703(C), (J), 13-707(A), 13-708(C), (E), 13-1203(B), 13-1204(F), 13-2508(B).

¶6 Pursuant to our obligation under *Anders*, we have searched the record for reversible error and have found none. Therefore, we affirm Ortega-Tapia's convictions and sentences.