

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

RAPHAEL MATTHEW GASTELUM,
Appellant.

No. 2 CA-CR 2020-0169
Filed April 15, 2021

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NOT FOR PUBLICATION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 Pinal County
No. S1100CR201702796
The Honorable Christopher J. O'Neil, Judge

AFFIRMED

COUNSEL

Harriette P. Levitt, Tucson
Counsel for Appellant

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MEMORANDUM DECISION

Presiding Judge Espinosa authored the decision of the Court, in which Vice Chief Judge Staring and Judge Eckerstrom concurred.

ESPINOSA, Presiding Judge:

¶1 After a jury trial, Raphael Gastelum was convicted of possession of a dangerous drug and possession of drug paraphernalia. The trial court sentenced him to concurrent, enhanced, and partially mitigated prison terms, the longer of which was 9.5 years.¹

¶2 On appeal, 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 she has reviewed the record and was unable to find any “arguable issues” to raise. Consistent with *Clark*, 196 Ariz. 530, ¶ 30, counsel has provided “a detailed factual and procedural history of the case, with citations to the record,” and has asked us to search the record for error. Gastelum has not filed a supplemental brief.

¶3 Viewed in the light most favorable to affirming the jury’s verdicts, *see State v. Tamplin*, 195 Ariz. 246, ¶ 2 (App. 1999), the evidence is sufficient here, *see* A.R.S. §§ 13-3401(6)(c)(xxxviii), 13-3407(A)(1), 13-3415(A), (F)(2). One morning in September 2017, a narcotics detective with the Casa Grande Police Department was patrolling the “highest drug area” in the city when he observed Gastelum walking down an alleyway and started following him. After Gastelum saw the detective, he threw from his pocket onto the ground a rolled-up paper towel containing a baggie of methamphetamine and a pipe used to smoke methamphetamine.

¹Although Gastelum absconded and delayed sentencing for more than ninety days after trial, *see* A.R.S. § 13-4033(C), the court made no finding that Gastelum had knowingly, intelligently, and voluntarily waived his right to appeal, *see State v. Raffaele*, 249 Ariz. 474, ¶ 15 (App. 2020). We therefore have jurisdiction pursuant to § 13-4033(A)(1).

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¶4 The record also supports the trial court's finding of at least two historical prior felony convictions. The sentences imposed are within the statutory ranges. *See* A.R.S. §§ 13-703(C), (J), 13-3407(B)(1), 13-3415(A).

¶5 Pursuant to our obligation under *Anders*, we have searched the record for fundamental, prejudicial error and have found none. *See State v. Fuller*, 143 Ariz. 571, 575 (1985). Accordingly, Gastelum's convictions and sentences are affirmed.