IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

ERIC WAYNE RETHERFORD,
Appellant.

No. 2 CA-CR 2022-0022
Filed October 18, 2022

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NOT FOR PUBLICATION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. CR20192185001
The Honorable Scott McDonald, Judge

AFFIRMED

COUNSEL

Robert A. Kerry, Tucson
Counsel for Appellant

MEMORANDUM DECISION

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

V Á S Q U E Z, Chief Judge:

¶1 After a jury trial, Eric Retherford was convicted of twenty-two counts of sexual exploitation of a minor under the age of fifteen, dangerous crimes against children. The trial court sentenced him to consecutive, minimum prison terms totaling 220 years.

¶2 Counsel has filed a brief in compliance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297 (1969), stating he has reviewed the record and "has found no tenable issue to raise on appeal." Consistent with *State v. Clark*, 196 Ariz. 530, ¶ 30 (App. 1999), counsel has provided "a detailed factual and procedural history of the case, with citations to the record," and has asked this court to search the record for fundamental error. Retherford has not filed a supplemental brief.

¶3 Viewed in the light most favorable to affirming the jury's verdicts, *see State v. Holle*, 240 Ariz. 300, ¶ 2 (2016), the evidence is sufficient here, *see* A.R.S. §§ 13-705(T)(1)(g), 13-3553(A)(2). In May 2019, law enforcement officers found on a secured digital card in Retherford's electronic tablet twenty-two images of child pornography depicting victims under the age of fifteen. The sentences imposed are within the statutory range. *See* A.R.S. § 13-705(F).

¶4 In conducting our independent review required by *Anders*, we note the trial court's apparent discomfort with the sentences it imposed. As former Chief Justice Berch has observed, "Arizona's sentence for this crime is by far the longest in the nation and is more severe than sentences imposed in Arizona for arguably more serious and violent crimes." *State v. Berger*, 212 Ariz. 473, ¶ 63 (2006) (Berch, J., concurring in part and dissenting in part). But, our supreme court has squarely addressed whether such sentencing outcomes violate the prohibition on cruel and unusual punishment of the Eighth Amendment to the United States Constitution. *Id.* ¶ 1. Recognizing its primary duty to defer to legislative conclusions as to appropriate sentence ranges, it has found no federal constitutional

violation.[1] *Id.* ¶¶ 29, 50-51 (establishment of prison terms for specific crimes "is properly within the province of legislatures, not courts"). Both the trial court and this court are bound by that conclusion.

¶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, we affirm Retherford's convictions and sentences.

[1]*Berger* did not address whether such sentences violated the parallel prohibition on cruel and unusual punishments found in article II, § 15 of the Arizona Constitution. *See Pool v. Superior Court*, 139 Ariz. 98, 108 (1984) ("The decisions of the United States Supreme Court are binding with regard to the interpretation of the federal constitution; interpretation of the state constitution is, of course, our province."). We decline to address that question here, when the defendant has not raised it and in the absence of any briefing.