IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

ALBERT ROBERT GAXIOLA,
Appellant.

No. 2 CA-CR 2014-0006
Filed June 5, 2014

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NOT FOR PUBLICATION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); Ariz. R. Crim. P. 31.24.

Appeal from the Superior Court in Pima County
No. CR20092300002
The Honorable James E. Marner, Judge

AFFIRMED

COUNSEL

Lori J. Lefferts, Pima County Public Defender
By David J. Euchner, Assistant Public Defender, Tucson
Counsel for Appellant

MEMORANDUM DECISION

Presiding Judge Vásquez authored the decision of the Court, in which Chief Judge Howard and Judge Miller concurred.

VÁ S Q U E Z, Presiding Judge:

¶1 After a jury trial, appellant Albert Gaxiola was convicted of two counts each of first-degree murder and aggravated assault, and one count each of first-degree burglary, attempted first-degree murder, aggravated robbery, and armed robbery. This court affirmed the convictions as well as the sentences for all offenses except the term imposed for aggravated robbery, which we vacated along with the order of restitution, remanding this matter to the trial court for resentencing. *State v. Gaxiola*, No. 2 CA-CR 2011-0270 (memorandum decision filed Oct. 18, 2012). This appeal followed resentencing.

¶2 Appointed counsel has filed a brief on appeal pursuant to *Anders v. California*, 386 U.S. 738 (1967), *Smith v. Robbins*, 528 U.S. 259 (2000), *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), and *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 2000), stating he "has reviewed the entire record and is unable to find any arguable legal issues to raise on appeal." He asks this court to search the record for error. Gaxiola has not filed a supplemental brief.

¶3 This court vacated the presumptive, consecutive, 7.5-year prison term on count eight, aggravated robbery, because the consecutive term violated the prohibition against double punishment set forth in A.R.S. § 13-116. *Gaxiola*, No. 2 CA-CR 2011-0270, ¶¶ 28-29. In December 2013, after this court's mandate issued in the first appeal, the trial court again sentenced Gaxiola to the presumptive prison term of 7.5 years, but ordered that it be served concurrently with the sentence for armed robbery in count seven. We have reviewed the record and the applicable law and find no reversible error with respect to the 7.5-year, concurrent prison term or the manner in which it was imposed.

¶4 We vacated the restitution order on appeal because neither Gaxiola nor his counsel had been present during the restitution hearing and Gaxiola had not waived his right to have counsel present. *Gaxiola*, No. 2 CA-CR 2011-0270, ¶ 31. The resentencing hearing was combined with a new restitution hearing, in which Gaxiola and his counsel appeared. After the hearing the court ordered Gaxiola to pay restitution in the amount of $11,848.76 to the victim who survived and $23,092 to Homicide Survivors, a victim support agency, an amount Gaxiola conceded was accurate. We see no error, much less fundamental, reversible error, with respect to this portion of the sentencing order.

¶5 We affirm the resentencing order and award of restitution.