

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

NUBIAN TYE HIMBA AMON-RA,
Appellant.

No. 2 CA-CR 2014-0021
Filed September 15, 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NOT FOR PUBLICATION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 Cochise County

No. CR201200268

The Honorable James L. Conlogue, Judge

AFFIRMED

COUNSEL

Law Office of Daniel J. DeRienzo, Prescott Valley
By Daniel J. DeRienzo
Counsel for Appellant

STATE v. AMON-RA
Decision of the Court

MEMORANDUM DECISION

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

M I L L E R, Presiding Judge:

¶1 After a jury trial, Nubian Amon-Ra was convicted of two counts of aggravated assault, both dangerous offenses, and sentenced to concurrent prison terms, the longer of which is 7.5 years. Counsel filed a brief in compliance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999), asserting he reviewed the record but found no arguable issue to raise on appeal. Consistent with *Clark*, 196 Ariz. 530, ¶ 32, 2 P.3d at 97, he provided “a detailed factual and procedural history of the case with citations to the record” and asks this court to search the record for error. Amon-Ra filed a supplemental brief asserting the trial court erred by denying his motion to dismiss, and that the state’s untimely disclosure of the recording of his probable cause hearing violated his due process rights.

¶2 Viewing the evidence in the light most favorable to sustaining the verdict, *see State v. Tamplin*, 195 Ariz. 246, ¶ 2, 986 P.2d 914, 914 (App. 1999), we find sufficient evidence supports the jury’s verdicts. The evidence shows that Amon-Ra and at least one other individual beat the victim with a wooden board and other implements, resulting in the victim’s hand being broken as he tried to protect himself. A.R.S. §§ 13-105(13); 13-1203(A)(1); 13-1204(A)(2), (3). Amon-Ra’s prison terms are within the statutory limit and were imposed properly. A.R.S. §§ 13-704(A); 13-1204(D).

¶3 Amon-Ra was charged by a complaint filed in justice court, and a preliminary hearing was conducted on April 25, 2012, pursuant to Rule 5, Ariz. R. Crim. P. After that hearing, the justice court found sufficient probable cause for five of the six crimes charged and transferred the case to superior court. No court

STATE v. AMON-RA
Decision of the Court

reporter was available and “[t]he record was taken by digital recording.” On September 27, Amon-Ra filed a motion to dismiss, claiming the recording was faulty because it did not contain the witnesses’ responses to questions and arguing his due process rights had been violated because the recording might have provided impeachment evidence. The trial court denied the motion, determining it was untimely pursuant to Rule 5.5, and noting the court would not speculate about the impeachment value of testimony presented at the hearing.

¶4 In his supplemental brief on appeal, Amon-Ra asserts the absence of a recording violated his “right to a full record of [his] probable cause determination” and his right to use the transcript for impeachment purposes. He also asserts the error resulted from the state’s purported failure to timely provide him the recording, violating his “substantive due process right to judicial review of the probable cause proceedings.” Thus, he concludes, he could not have waived his right “to request a new probable cause determination” and that he is entitled to a redetermination of probable cause.

¶5 Amon-Ra was required to challenge his probable cause determination within twenty-five days and failed to do so. Ariz. R. Crim. P. 5.5(b). He asserts, however, that he did not comply with Rule 5.5(b) because the state failed to timely provide him with the recording of his preliminary hearing. But Amon-Ra cites nothing in the record showing when he requested the recording or a transcript of the hearing. Rule 5.6 provides that a transcript will be provided only when a party provides “written request . . . avowing that there is a material need for the transcript.”

¶6 Finally, Amon-Ra is mistaken that he is entitled to the recording or transcript because the testimony might have had impeachment value at trial. “The purpose of a preliminary hearing is not to give defendants an opportunity for discovery but to determine probable cause to hold defendant to answer. Any discovery resulting from a preliminary hearing is incidental and not a right of defendant.” *State v. Prevost*, 118 Ariz. 100, 103, 574 P.2d 1319, 1322 (App. 1977).

STATE v. AMON-RA
Decision of the Court

¶7 Pursuant to our obligation under *Anders*, we searched the record for fundamental, reversible error and found none. See *State v. Fuller*, 143 Ariz. 571, 575, 694 P.2d 1185, 1189 (1985) (stating *Anders* requires court to search record for fundamental error). We reject the arguments Amon-Ra raised in his supplemental brief. Accordingly, we affirm his convictions and sentences.