

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

JESUS MADRID JR.,
Appellant.

No. 2 CA-CR 2014-0211
Filed March 30, 2015

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NOT FOR PUBLICATION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. 31.24.

Appeal from the Superior Court in Pinal County
No. S1100CR201202496
The Honorable Bradley M. Soos, Judge Pro Tempore

AFFIRMED

COUNSEL

Flores & Clark, LLC, Globe
By Daisy Flores
Counsel for Appellant

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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 Following a jury trial, appellant Jesus Madrid Jr. was convicted of two counts of child molestation and two counts of public sexual indecency to a minor. The trial court sentenced him to a combination of prison terms totaling 22.25 years. Counsel has 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), stating she has reviewed the record and has found no “arguable question of law” to raise on appeal. Counsel has also asked us to search the record for fundamental error.

¶2 In a supplemental pro se brief, Madrid claims the trial court erred by (1) “not excluding victims and mother from court room during testimony,” (2) “not allowing counsel permission to interview the victims and their mother,” (3) “not securing evidence . . . put back in [his] property at the jail,” (4) “failing to inquire into conflict of interest,” and (5) denying his requests for change of counsel. He also alleges prosecutorial misconduct in relation to the evidence returned to property at the jail, specifically his cellular telephone.

¶3 The majority of Madrid’s arguments in his supplemental petition amount to claims of ineffective assistance of counsel. Such claims may not be raised on appeal, and we therefore do not address them. See *State v. Spreitz*, 202 Ariz. 1, ¶ 9, 39 P.3d 525, 527 (2002).¹

¹To the extent Madrid’s arguments relating to his cellular telephone can be read as claims of prosecutorial misconduct, he has not sufficiently developed such an argument on review, and we

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¶4 We reject Madrid’s claims relating to the presence of the victims and their mother in the courtroom during each other’s testimony and to their refusal to participate in pretrial interviews. The trial court correctly applied Arizona’s Victim’s Bill of Rights. *See* A.R.S. §§ 13-4420, 13-4433; *State v. Uriarte*, 194 Ariz. 275, ¶¶ 11-19, 981 P.2d 575, 577-79 (App. 1998).

¶5 Madrid also contends the trial court violated the prohibition against involuntary servitude set forth in the Thirteenth Amendment to the United States Constitution because he was in shackles and “under complete control of the State” when he had not yet been convicted. Madrid has cited no authority to support a claim that imprisonment pending trial is equivalent to involuntary servitude, and we find none. *See, e.g., Waller v. Jordan*, 58 Ariz. 169, 118 P.2d 450 (1941).

¶6 Madrid also argues the trial court erred in denying his motions for change of counsel. The Sixth Amendment to the United States Constitution entitles a criminal defendant to competent representation but not to “counsel of choice” or “a meaningful relationship” with counsel. *State v. Cromwell*, 211 Ariz. 181, ¶ 28, 119 P.3d 448, 453 (2005). In deciding whether to grant a motion for substitute counsel, a trial court must consider the following factors: “whether an irreconcilable conflict exists between counsel and the accused, and whether new counsel would be confronted with the same conflict; the timing of the motion; inconvenience to witnesses; the time period already elapsed between the alleged offense and trial; [and] the proclivity of the defendant to change counsel.” *State v. Moody*, 192 Ariz. 505, ¶ 11, 968 P.2d 578, 580 (1998), *quoting State v.*

therefore do not address it. *See* Ariz. R. Crim. P. 32.9(c)(1) (petition for review shall contain “reasons why the petition should be granted”); *State v. Rodriguez*, 227 Ariz. 58, n.4, 251 P.3d 1045, 1048 n.4 (App. 2010) (declining to address argument not raised in petition for review); *see also State v. Bolton*, 182 Ariz. 290, 298, 896 P.2d 830, 838 (1995) (“Failure to argue a claim on appeal constitutes waiver of that claim.”).

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LaGrand, 152 Ariz. 483, 486-87, 733 P.2d 1066, 1069-70 (1987). A defendant's loss of trust in counsel alone does not require the trial court to appoint new counsel. *State v. Paris-Sheldon*, 214 Ariz. 500, ¶ 14, 154 P.3d 1046, 1051 (2007). It is only when there is a "complete breakdown in communication or an irreconcilable conflict between a defendant and his appointed counsel, that defendant's Sixth Amendment right to counsel has been violated." *Id.* ¶¶ 12, 14, quoting *State v. Torres*, 208 Ariz. 340, ¶ 6, 93 P.3d 1056, 1058 (2004). The defendant has the burden of demonstrating an irreconcilable conflict or breakdown in communication. *Torres*, 208 Ariz. 340, ¶ 8, 93 P.3d at 1059.

¶7 Madrid moved for new counsel in August 2013, stating in his motion that counsel had "no inten[tion] of helping me" and that they did not "agree on how [to] . . . approach[]" the case. He again moved for new counsel in September 2013, providing no further elaboration as to the basis of the motion. In October, the trial court held a hearing on those motions and denied them. In March and June 2014, Madrid again moved for new counsel, claiming counsel had not done enough to investigate his case. After the June motion, which was filed after Madrid was convicted, the court appointed Madrid appellate counsel.

¶8 First, Madrid has not provided us with the transcript of the hearing on his motions for a change of counsel. "We must, therefore, presume that the record supports the decision of the trial court." *State v. Huffman*, 169 Ariz. 465, 467, 820 P.2d 329, 331 (App. 1991). Further, nothing in any of Madrid's motions suggest a "complete breakdown in communication or an irreconcilable conflict" between Madrid and his trial counsel. *Paris-Sheldon*, 214 Ariz. 500, ¶ 12, 154 P.3d at 1051, quoting *Torres*, 208 Ariz. 340, ¶ 6, 93 P.3d at 1058. Rather, Madrid's objections to counsel were more in the nature of claims of ineffective assistance of counsel, which generally are not "a consideration when a defendant requests substitution of counsel." *Torres*, 208 Ariz. 340, ¶ 15, 93 P.3d at 1060 (stating quality of counsel not considered; claim of ineffective assistance must now be raised in Rule 32 proceeding). We therefore cannot say Madrid has established the court abused its discretion in denying his motions for new counsel.

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¶9 Viewed in the light most favorable to sustaining the verdict, the evidence was sufficient to support the jury's finding of guilt. *See State v. Tamplin*, 195 Ariz. 246, ¶ 2, 986 P.2d 914, 914 (App. 1999). The evidence presented at trial showed Madrid twice touched the seven-year-old victim's genitals with his foot while her nine-year-old sister was present. We further conclude the sentences imposed are within the statutory limit. *See* A.R.S. §§ 13-701; 13-703(B)(2); 13-705; 13-1401; 13-1403(A)(1), (B); 13-1410.

¶10 Pursuant to our obligation under *Anders*, we have searched the record for fundamental, reversible error and have found none. And, as discussed above, we have rejected the issues raised in Madrid's supplemental brief. Therefore, his convictions and sentences are affirmed.