

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

ALBERTO ARELLANO VALENCIA,
Appellant.

No. 2 CA-CR 2016-0056
Filed September 13, 2016

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NOT FOR PUBLICATION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 Pima County
No. CR20152815001
The Honorable Howard Fell, Judge Pro Tempore

AFFIRMED

COUNSEL

Steven R. Sonenberg, Pima County Public Defender
By Abigail Jensen, Assistant Public Defender, Tucson
Counsel for Appellant

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MEMORANDUM DECISION

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

ECKERSTROM, Chief Judge:

¶1 Following a jury trial, appellant Alberto Valencia was convicted of resisting arrest. The trial court sentenced him to a 3.75-year term of imprisonment. 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 “arguably meritorious issue to raise on appeal.” Counsel has asked us to search the record for fundamental error. In a supplemental pro se brief, to the extent we understand it, Valencia contends the court erred in granting the state’s motion in limine precluding evidence of injuries he sustained during his arrest, his speedy trial and due process rights were violated, the prosecutor committed misconduct, the evidence was insufficient to support his convictions, and his sentence was excessive.¹

¶2 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 Valencia kicked at uniformed officers and wielded a small “screwdriver that was shaved off on the end to more of a pointed edge” when they attempted to remove him from a vehicle. He continued to fight officers after leaving the vehicle, before they ultimately subdued and arrested him. Valencia’s claim that the evidence was insufficient

¹Valencia also argues his appellate counsel was ineffective, but such a claim may only be raised in post-conviction proceedings. *State v. Spreitz*, 202 Ariz. 1, ¶ 9, 39 P.3d 525, 527 (2002).

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merely asks us to reweigh the evidence presented; that we will not do. *See State v. Lee*, 189 Ariz. 590, 603, 944 P.2d 1204, 1217 (1997).

¶3 We further conclude the sentence imposed is within the statutory limit. *See* A.R.S. §§ 13-703(C), (J), 13-2508. We will not disturb a lawfully imposed sentence, and Valencia has not established his sentence was “clearly . . . excessive.” *State v. Gillies*, 142 Ariz. 564, 573, 691 P.2d 655, 664 (1984) (“Where a sentence is within the permissible statutory limits, it will not be modified or reduced on appeal unless it clearly appears excessive under the circumstances.”).

¶4 We have considered the other arguments Valencia raised, and, pursuant to our obligation under *Anders*, we have searched the record for fundamental, reversible error and have found no such error. Therefore, Valencia’s convictions and sentences are affirmed.