DIVISION ONE
FILED: 7/9/2013
RUTH A. WILLINGHAM, CLERK
BY: mjt

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,	)	No. 1 CA-CR 11-0460
	)	
Appellee,	)	DEPARTMENT A
	)	
v.	)	**MEMORANDUM DECISION**
	)	(Not for Publication -
LEONARD LEE HENDRIX,	)	Rule 111, Rules of the
	)	Arizona Supreme Court)
Appellant.	)	
	)	

Appeal from the Superior Court in Maricopa County

Cause No. CR2010-125362-001

The Honorable Carolyn K. Passamonte, Judge *Pro Tempore*

AFFIRMED

Thomas C. Horne, Arizona Attorney General — Phoenix
by Joseph T. Maziarz, Chief Counsel,
Criminal Appeals Section
Attorneys for Appellee

Charles M. Thomas — Mesa
Attorney for Appellant

S W A N N, Judge

¶1 Defendant Leonard Lee Hendrix appeals his conviction of one count of aggravated driving or actual physical control while under the influence of intoxicating liquor or drugs, a class 4 felony ("Count 1"); and one count of aggravated driving

or actual physical control of a vehicle with a blood alcohol concentration of 0.08 or more, a class 4 felony ("Count 2"). This case comes to us as an appeal under *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969). Defendant's appellate counsel has searched the record on appeal, found no arguable nonfrivolous question of law, and asks us to review the record for fundamental error. *See Anders*, 386 U.S. 738; *Smith v. Robbins*, 528 U.S. 259 (2000); *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999). Defendant was given the opportunity to file a supplemental brief *in propria persona* but did not do so.

¶2 We have searched the record for fundamental error and find none. Accordingly, we affirm.

FACTS AND PROCEDURAL HISTORY

¶3 On the evening of May 16, 2010, Defendant was driving his truck on Broadway Road in Phoenix. After witnessing the truck straddling a lane-dividing line, a Phoenix police officer followed the truck and initiated a traffic stop. Defendant and the officer pulled into a parking lot, and Defendant exited the vehicle. The officer asked for Defendant's driver's license, but Defendant was only able to produce an Arizona identification card.

¶4 Defendant admitted that he had consumed alcohol before driving, and the officer administered standardized field

sobriety tests. Defendant's performance on these tests was consistent with that of a person under the influence of alcohol. After completing the standardized field sobriety tests, Defendant was handcuffed, placed under arrest for driving under the influence, and transported to the police DUI van.

¶5 Once Defendant arrived at the DUI van, he voluntarily agreed to a blood draw and an interview. Defendant's blood sample results showed that he had a blood alcohol concentration of 0.181.[1] During the interview, Defendant stated that he had been drinking beer earlier that night, including three beers within the last hour or two. Defendant also admitted that his driver's license was suspended.

¶6 Defendant was charged by information with Counts 1 and 2, and a jury found him guilty after a five-day trial. At sentencing, the court found that the state had proved two of Defendant's prior felony convictions.[2] The court considered these two historical prior felony convictions in sentencing. The court then considered various mitigating circumstances, including the fact that the two historical prior felonies were

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[1] A forensic scientist who works in the Phoenix Police Department Crime Lab testified that there was no evidence that Defendant's blood sample had been tampered with.

[2] Defendant was previously convicted on two separate occasions, one offense in June 2005 and one offense in November 2006, for failure to register as a sex offender, a class 4 felony.

not for violent offenses, that Defendant has community and family support, and that Defendant expressed remorse for his actions. The court found that the mitigating circumstances "substantially outweigh the presumptive term" and consequently sentenced Defendant to the mitigated term of six years in prison.[3] Defendant was credited with 49 days of presentence incarceration.

¶7 Defendant timely appeals. We have jurisdiction under A.R.S. §§ 12-120.21(A)(1), 13-4031, and 13-4033(A)(1).

DISCUSSION

¶8 The record reveals no fundamental error. Defendant was represented by counsel and was present at all critical proceedings. The record of voir dire does not demonstrate the empanelment of any biased jurors, and the jury was properly composed of eight jurors and one alternate. *See* Ariz. R. Crim. P. 18.1(a); A.R.S. § 21-102(B).

¶9 The evidence that the state presented at trial was properly admissible. The state presented evidence that Defendant was pulled over for a traffic stop due to his erratic driving. Defendant's performance on standardized field sobriety tests was consistent with a person who was intoxicated. A.R.S.

[3] The court also reinstated Defendant's probation on a 2000 conviction for possession or use of marijuana.

§ 28-1381(A)(1). Further, Defendant's blood sample results demonstrated that Defendant's blood contained an alcohol concentration well above 0.08 within two hours of driving his truck. A.R.S. § 28-1381(A)(2). Defendant also admitted on multiple occasions that he had been drinking earlier in the evening. The state's evidence was sufficient to allow the jury to find Defendant guilty of Counts 1 and 2.

¶10 In its discretion, the court imposed a mitigated sentence of six years in prison. Pursuant to A.R.S. § 13-703(C), "a person shall be sentenced as a category three repetitive offender if the person . . . stands convicted of a felony and has two or more historical prior felony convictions." In this case, the court properly found that Defendant had two historical prior felony convictions -- one in 2005 and one in 2006 -- for the purposes of sentencing. The court then weighed the mitigating factors, and imposed a mitigated term. A.R.S. § 13-703(J). The court also correctly calculated Defendant's presentence incarceration credit of 49 days.

CONCLUSION

¶11 We have reviewed the record for fundamental error and find none. *See Leon*, 104 Ariz. at 300, 451 P.2d at 881. We therefore affirm.

¶12 Defense counsel's obligations pertaining to this appeal have come to an end. *See State v. Shattuck*, 140 Ariz.

582, 584-85, 684 P.2d 154, 156-57 (1984). Unless, upon review, counsel discovers an issue appropriate for petition for review to the Arizona Supreme Court, counsel must only inform Defendant of the status of this appeal and his future options. *Id.* Defendant has 30 days from the date of this decision to file a petition for review *in propria persona*. Ariz. R. Crim. P. 31.19(a). Upon the court's own motion, he has 30 days from the date of this decision in which to file a motion for reconsideration.

/s/
_____
PETER B. SWANN, Judge

CONCURRING:

/s/
_____
PATRICIA A. OROZCO, Presiding Judge

/s/
_____
KENT E. CATTANI, Judge