

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 11/13/2012
RUTH A. WILLINGHAM,
CLERK
BY: sls

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) No. 1 CA-CR 12-0102
)
Appellee,) DEPARTMENT D
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
SCOTT DEAN ETCHISON,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. CR2011-138731-001 SE

The Honorable Phemonia L. Miller, Judge *Pro Tempore*

AFFIRMED

Thomas C. Horne, Arizona Attorney General Phoenix
By Kent E. Cattani, Chief Counsel
Criminal Appeals/Capital Litigation Section
Attorneys for Appellee

James J. Haas, Maricopa County Public Defender Phoenix
By Joel M. Glynn, Deputy Public Defender
Attorneys for Appellant

B R O W N, Judge

¶1 Scott Dean Etchison appeals his convictions and sentences for two counts of aggravated driving under the

influence. Counsel for Etchison filed a brief in accordance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), advising that after searching the record on appeal, he was unable to find any arguable grounds for reversal. Etchison was granted the opportunity to file a supplemental brief in *propria persona*, but he has not done so.

¶2 Our obligation is to review the entire record for reversible error. *State v. Clark*, 196 Ariz. 530, 537, ¶ 30, 2 P.3d 89, 96 (App. 1999). We view the facts in the light most favorable to sustaining the conviction and resolve all reasonable inferences against Etchison. *State v. Guerra*, 161 Ariz. 289, 293, 778 P.2d 1185, 1189 (1989). Finding no reversible error, we affirm.

¶3 Etchison was charged with one count of aggravated driving while impaired to the slightest degree, in violation of Arizona Revised Statutes ("A.R.S.") section 28-1381(A)(1) (2012),¹ and one count of aggravated driving while exceeding the blood alcohol limit, in violation of A.R.S. § 28-1381(A)(2) (2012). Both were charged as class four felonies because the offenses were committed while Etchison's driver's license was suspended. The following evidence was presented at trial.

¹ Absent material revisions after the date of an alleged offense, we cite the statute's current version.

¶14 On the morning of July 27, 2011, Etchison drank a couple of beers and some vodka after doing yard work for a friend, finishing his last drink around 1:00 in the afternoon. Later, he went to his ex-girlfriend's ("B.D.") house, who lived in the same neighborhood. Using a bike and a skateboard he brought to ride through the neighborhood, Etchison left and returned a couple of times. Each time he returned to B.D.'s house, Etchison was upset and emotional. He also yelled profanities and broke a window on B.D.'s home. When Etchison came back a final time at approximately 2:45 p.m., B.D. called 9-1-1.

¶15 At some point while B.D. was on the phone with the 9-1-1 operator, B.D.'s daughter talked to Etchison at the door to try and convince him to leave, which eventually he did. Standing by the front window of her home, B.D. saw Etchison driving his van. She told the operator, "he's driving away; he's driving up Harris Street now towards Main . . . He's going Southbound on Harris." She testified that she knew it was Etchison because she could see his profile in the van and she was familiar with his vehicle.

¶16 Etchison parked his car approximately 200 feet South of B.D.'s house in an apartment complex parking lot and returned to B.D.'s backyard on foot. When Etchison saw the police vehicle, he attempted to flee but the officers were eventually

able to detain him. The officers noticed that Etchison exhibited signs of impairment, such as the smell of alcohol on his breath, bloodshot eyes, swaying and general lack of coordination when standing, and slurred speech. They transported Etchison to the main police station for further investigation.

¶17 After being informed of his *Miranda*² rights, Etchison agreed to undergo a DUI investigation. After some preliminary questioning, the officer observed all six cues of the Horizontal Gaze Nystagmus ("HGN") test, indicating a blood alcohol content of .08 or greater and impairment. A blood draw confirmed the HGN test result, showing Etchison's blood alcohol content to be .219.

¶18 At trial, the parties stipulated that Etchison's driver's license had been suspended at the time of the incident and that he knew or should have known of this suspension. A jury found Etchison guilty as charged on both counts. After a hearing on priors, the court found Etchison had one prior historical aggravated DUI felony conviction. The court sentenced Etchison to minimum, concurrent three-year prison terms, with a credit for 182 days of presentence incarceration. This timely appeal followed.

² *Miranda v. Arizona*, 384 U.S. 436 (1966).

¶9 We have searched the entire record for reversible error and find none. All of the proceedings were conducted in accordance with the Arizona Rules of Criminal Procedure. The record shows Etchison was present and represented by counsel at all pertinent stages of the proceedings, was afforded the opportunity to speak before sentencing, and the sentence imposed was within statutory limits. Based on the foregoing, we affirm Etchison's convictions and sentences.

¶10 Upon the filing of this decision, counsel shall inform Etchison of the status of the appeal and his options. Defense counsel has no further obligations unless, upon review, counsel finds an issue appropriate for submission to the Arizona Supreme Court by petition for review. See *State v. Shattuck*, 140 Ariz.

582, 584-85, 684 P.2d 154, 156-57 (1984). Etchison shall have thirty days from the date of this decision to proceed, if he so desires, with a *pro per* motion for reconsideration or petition for review.

/s/

MICHAEL J. BROWN, Presiding Judge

CONCURRING:

/s/

ANDREW W. GOULD, Judge

/s/

DONN KESSLER, Judge