

NOTICE: NOT FOR PUBLICATION.
UNDER ARIZ. R. SUP. CT. 111(c), THIS DECISION DOES NOT CREATE LEGAL PRECEDENT
AND MAY NOT BE CITED EXCEPT AS AUTHORIZED.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Appellee*,

v.

BRITNEY REAN MACIAS, *Appellant*.

No. 1 CA-CR 13-0292

FILED 12-19-2013

Appeal from the Superior Court in Maricopa County

No. CR2012-114972-001

The Honorable Jerry Bernstein, Judge Pro Tem

AFFIRMED

COUNSEL

Arizona Attorney General's Office, Phoenix

By Joseph T. Maziarz

Counsel for Appellee

Maricopa County Public Defender's Office, Phoenix

By Paul J. Prato

Counsel for Appellant

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MEMORANDUM DECISION

Judge Randall M. Howe, presiding, delivered the decision of the Court, in which Judge Samuel A. Thumma and Judge Patricia A. Orozco joined.

H O W E, Judge:

¶1 This appeal is filed in accordance with *Anders v. California*, 386 U.S. 738 (1967) and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969). Counsel for Britney Rean Macias asks this Court to search the record for fundamental error. Macias was given an opportunity to file a supplemental brief in propria persona. She has not done so. After reviewing the record, we affirm Macias' convictions and sentences for (1) aggravating driving while under the influence of intoxicating liquor and for (2) aggravating driving while under the influence of intoxicating liquor with a blood alcohol concentration (BAC) above 0.08 percent.

FACTS & PROCEDURAL HISTORY

¶2 On March 17, 2012, at approximately 1:00 a.m., Macias backed her vehicle into another vehicle in the Westgate City Center (WCC) parking lot. After WCC security called police, Glendale Police Officer P.C., who was nearby on routine patrol, arrived at the scene.

¶3 Officer P.C. noted a strong odor of alcohol emanating from Macias' breath. He also observed that Macias' speech was slurred, and that her eyes were watery and bloodshot. When Officer P.C. asked Macias what had happened, she responded that she was "fine." The officer repeated his question, and Macias gave the same response.

¶4 Officer P.C. administered the horizontal gaze nystagmus (HGN) test on Macias and noted six of six cues of impairment. The officer asked Macias how much alcohol she had consumed that evening, and she admitted to having "a couple of shots." Upon administering additional field sobriety tests, Officer P.C. observed seven out of eight cues of impairment on the walk-and-turn test and four out of four cues of impairment on the one-leg-stand test.

¶5 Macias was arrested and driven to the police substation, where Officer P.C. administered a breath intoxilyzer test. The first breath test revealed that Macias had a BAC concentration of 0.193 percent; the

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second breath test revealed a BAC of 0.192 percent. Officer P.C. also drew Macias' blood, which later revealed that her blood contained 0.218 percent ethyl alcohol.

¶6 After advising Macias of her *Miranda*¹ rights, Officer P.C. asked Macias what she had to drink. Macias admitted to having consumed "about three" drinks of "Jack." When asked to rate her intoxication level on a scale of zero to ten, Macias stated that she was "either a four or a five." Finally, a records check revealed that Macias' driving privileges had been suspended on the date of the collision.

¶7 Macias was charged with (1) aggravated driving or actual physical control while under the influence of intoxicating liquor or drugs and (2) aggravated driving or actual physical control while under the influence of intoxicating liquor or drugs (alcohol level of 0.08% or more), class four felonies. At the close of trial, the jury found Macias guilty on both charges.

¶8 The trial court conducted the sentencing hearing in compliance with Macias' constitutional rights and Rule 26 of the Arizona Rules of Criminal Procedure. The trial court sentenced Macias to four months imprisonment and gave her credit for 45 days of presentence incarceration. The trial court also ordered that Macias be placed on three years of probation upon her release from prison and imposed necessary fines and fees.

DISCUSSION

¶9 We review Macias' convictions and sentences for fundamental error. *See State v. Gendron*, 168 Ariz. 153, 155, 812 P.2d 626, 628 (1991).

¶10 Counsel for Macias has advised this Court that after a diligent search of the entire record, he has found no arguable question of law. We have read and considered counsel's brief and fully reviewed the record for reversible error. *See Leon*, 104 Ariz. at 300, 451 P.2d at 881. We find none. All of the proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure. So far as the record reveals, Macias was represented by counsel at all stages of the proceedings and the

¹ *Miranda v. Arizona*, 384 U.S. 436 (1966).

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sentence imposed was within the statutory limits. We decline to order briefing and we affirm Macias' convictions and sentence.

¶11 Upon the filing of this decision, defense counsel shall inform Macias of the status of her appeal and of her future 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). Macias shall have thirty days from the date of this decision to proceed, if she desires, with a pro per motion for reconsideration or petition for review. On the Court's own motion, we extend the time for Macias to file a pro per motion for reconsideration to thirty days from the date of this decision.



Ruth A. Willingham · Clerk of the Court
FILED: gsh