

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Appellee*,

v.

LAUREN JANE MCCRAY, *Appellant*.

No. 1 CA-CR 16-0100
FILED 12-6-2016

Appeal from the Superior Court in Yavapai County
No. P1300CR201200204
The Honorable Michael R. Bluff, Judge

AFFIRMED

COUNSEL

Arizona Attorney General's Office, Phoenix
By Joseph T. Maziarz
Counsel for Appellee

Craig Williams, Prescott Valley
Counsel for Appellant

MEMORANDUM DECISION

Judge Samuel A. Thumma delivered the decision of the Court, in which
Presiding Judge Patricia K. Norris and Judge Margaret H. Downie joined.

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T H U M M A, Judge:

¶1 This is an appeal under *Anders v. California*, 386 U.S. 738 (1967) and *State v. Leon*, 104 Ariz. 297 (1969). Counsel for appellant Laura Jane McCray has advised the court that, after searching the entire record, he has found no arguable question of law and asks this court to conduct an *Anders* review of the record. McCray was given the opportunity to file a supplemental brief pro se, but has not done so. This court has reviewed the record and has found no reversible error. Accordingly, McCray's convictions and resulting sentences are affirmed.

FACTS¹ AND PROCEDURAL HISTORY

¶2 In February 2012, McCray was seen driving 47 miles per hour on a Prescott street where the posted speed limit was 35 miles per hour. A police officer stopped McCray and asked for her license, insurance and registration. McCray provided her insurance card and registration but said her license had been suspended. After McCray stepped out of her vehicle, the officer smelled alcohol. The officer then performed field sobriety tests, which suggested impairment, and then took McCray to the station where she provided a blood sample. The results of the blood sample showed that McCray had a blood alcohol content (BAC) of .101.

¶3 McCray was arrested and charged by indictment with four Class 4 felonies: (1) aggravated driving with a BAC of 0.08 or more with a suspended license; (2) aggravated driving under the influence with a suspended license; (3) aggravated driving with a BAC of 0.08 or more with two prior convictions within 84 months; and (4) aggravated driving under the influence with two prior convictions within 84 months. The State timely alleged McCray had prior felony convictions on various dates, including as relevant here, two prior aggravated DUI convictions and two convictions for possession or use of dangerous drugs.

¹ On appeal, this court views the evidence in the light most favorable to sustaining the conviction and resolves all reasonable inferences against defendant. *State v. Karr*, 221 Ariz. 319, 320 ¶ 2 (App. 2008).

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¶4 McCray moved to preclude admission of, or sanitize, her prior felony convictions and the State requested a hearing pursuant to Arizona Rule of Evidence 609 (2016).² The parties stipulated that sanitized versions of her two prior felony convictions for possession or use of dangerous drugs could be used for impeachment if she elected to testify at trial. The parties disagreed over sanitizing the two prior aggravated DUI convictions. McCray asked that, if the court denied her motion to preclude or sanitize the two prior aggravated DUI convictions, trial for counts 1 and 2 be severed from the trial for counts 3 and 4, expressing concern about unfair prejudice. The court found that, because the prior aggravated DUI convictions were elements of the crime, the convictions should not be precluded or sanitized, and denied the request to sever trial.

¶5 The State made several plea offers that McCray rejected at hearings held pursuant to *State v. Donald*, 198 Ariz. 406 (App. 2000).

¶6 After an evidentiary hearing, the court denied McCray's motion to suppress statements she made regarding her driver's license status, finding the statements were made voluntarily and did not violate her rights pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966). McCray moved to dismiss the charges, alleging the State "create[d] difficulties for her to obtain an independent blood test." After an evidentiary hearing, the court denied the motion, finding that any difficulties McCray had in obtaining an independent blood test were not created by the State.

¶7 After pretrial disclosure and additional motion practice, a five-day jury trial was held in January 2016. During trial, the State offered testimony from the police officer who arrested McCray, as well as criminalists who analyzed the blood and urine samples. After the State rested, McCray moved for a judgment of acquittal on all counts pursuant to Arizona Rule of Criminal Procedure 20. McCray again asked the court to reconsider the issue of the independent blood test when deciding whether to dismiss the case. The court denied the motion for judgment of acquittal and to reconsider. The court also denied McCray's renewed request to sever trial of counts 1 and 2 from counts 3 and 4, again finding that trying the counts together would not create unfair prejudice.

² Absent material revisions after the relevant dates, statutes and rules cited refer to the current version unless otherwise indicated.

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¶8 After being advised of her right to remain silent, McCray elected to testify in her own defense and recalled the arresting officer as a witness.

¶9 After the jury was instructed on the law and heard closing arguments, they deliberated and found McCray guilty of counts 1 and 3 and not guilty of counts 2 and 4. The jury was polled and each juror answered individually that these were their true verdicts.

¶10 Before sentencing, the court received a pre-sentence report and information McCray provided. At sentencing, the court found no aggravating factors and that McCray's family and community support were mitigating factors. The court sentenced McCray to concurrent, presumptive prison terms of 9.75 years for both convictions, awarding McCray 407 days of pre-sentence incarceration credit.³ McCray timely appealed her convictions and sentences. This court has jurisdiction pursuant to Arizona Revised Statutes (A.R.S.) §§ 12-120.21(A)(1), 13-4031, and -4033(A)(1).

DISCUSSION

¶11 The record shows that McCray was represented by counsel at all stages of the proceedings and counsel was present at all critical stages. The record provided contains substantial evidence supporting McCray's convictions and resulting sentences. From the record, all proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure, and the sentences imposed were within statutory limits and permissible ranges.

³ The precise basis for this credit is unclear. The record shows that McCray was entitled to at least 392 days, does not show exactly how long she was in custody when the first nationwide felony arrest warrant was issued but also does not show that the 407 days of pre-sentence incarceration credit was inadequate or otherwise in error. Accordingly, and recognizing McCray may have received more credit than she was entitled, on this record, McCray was not deprived of her right to presentence incarceration credit. *See* A.R.S. § 13-712(B).

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CONCLUSION

¶12 This court has read and considered counsel's brief, and has searched the record provided for reversible error and has found none. *Leon*, 104 Ariz. at 300; *State v. Clark*, 196 Ariz. 530, 537 ¶ 30 (App. 1999). Accordingly, McCray's convictions and resulting sentences are affirmed.

¶13 Upon the filing of this decision, defense counsel is directed to inform McCray of the status of the appeal and of her future options. Defense counsel has no further obligations unless, upon review, counsel identifies an issue appropriate for submission to the Arizona Supreme Court by petition for review. *See State v. Shattuck*, 140 Ariz. 582, 584-85 (1984). McCray shall have 30 days from the date of this decision to proceed, if she desires, with a pro se motion for reconsideration or petition for review.



AMY M. WOOD • Clerk of the Court
FILED: AA