

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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.

NEPOMUCENO VIZCAINO-VALDILLE, *Appellant*.

No. 1 CA-CR 16-0693
FILED 6-8-2017

Appeal from the Superior Court in Maricopa County
No. CR2008-112409-001 DT
The Honorable David V. Seyer, Judge *Pro Tempore*

AFFIRMED AS MODIFIED

COUNSEL

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

Maricopa County Office of the Legal Defender, Phoenix
By Cynthia Dawn Beck
Counsel for Appellant

STATE v. VIZCAINO-VALDILLE
Decision of the Court

MEMORANDUM DECISION

Chief Judge Michael J. Brown delivered the decision of the Court, in which Judge Randall M. Howe and Judge Kenton D. Jones joined.

B R O W N, Chief Judge:

¶1 Nepomuceno Vizcaino-Valdille appeals his convictions and sentences for four counts of aggravated driving under the influence, asserting he is entitled to 50 days of presentence incarceration credit instead of the 49 days awarded by the trial court. In response, the State concedes the error.

¶2 Failure to award full credit for time served in presentence incarceration is fundamental error. *State v. Cofield*, 210 Ariz. 84, 86, ¶ 10 (App. 2005). All time actually spent in custody pursuant to an offense until the prisoner is sentenced to imprisonment for such offense shall be credited against the term of imprisonment. Ariz. Rev. Stat. sections 13-712(B), -903(F).

¶3 Vizcaino-Valdille was tried in absentia in 2008. After a jury found him guilty, a bench warrant was issued. Vizcaino-Valdille was apprehended on August 9, 2016 and was in custody until he was sentenced on September 28, 2016, for a total of 50 days.

¶4 Because we accept the State's concession of error, we modify Vizcaino-Valdille's sentence to reflect a total of 50 days of presentence incarceration credit. We otherwise affirm Vizcaino-Valdille's convictions and sentences.



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