DIVISION ONE
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PHILIP G. URRY, CLERK
BY: GH

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA, Appellee,	)	No. 1 CA-CR 08-0488
	)	DEPARTMENT D
	)	**MEMORANDUM DECISION**
v.	)	(Not for Publication- Rule 111, Rules of the Arizona Supreme Court)
VAUGHN ULYSSES OAKRY, Appellant.	)	

Appeal from the Superior Court of Maricopa County

Cause No. CR2005-009570-001 DT

The Honorable Carolyn K. Passamonte, Judge Pro Tem

AFFIRMED

Terry Goddard, Attorney General — Phoenix
By Kent E. Cattani, Chief Counsel
Criminal Appeals Section
Attorneys for Appellee

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

T H O M P S O N, Judge

¶1 This case comes to us as an appeal under *Anders v. California*, 386 U.S. 738 (1978), and *State v. Leon*, 104 Ariz.

297, 451 P.2d 878 (1969). Counsel for Vaughn Ulysses Oakry (defendant) has advised us that, after searching the entire record, he has been unable to discover any arguable questions of law and has filed a brief requesting this court conduct an *Anders* review of the record. Defendant has been afforded an opportunity to file a supplemental brief *in propia persona*, and he has not done so.

¶2 A Department of Public Safety officer on an unrelated investigation in a residential neighborhood observed defendant's car exceeding the speed limit. The officer initiated a traffic stop and noted that defendant had slow response times, watery and bloodshot eyes, and a "moderate" odor of alcohol. The officer placed defendant under arrest. Another officer performed a Horizontal Gaze Nystagmus test on defendant, and defendant exhibited six out of six cues on the test, consistent with impairment due to alcohol intoxication.

¶3 Defendant was transported to a police DUI processing van, received his *Miranda*[1] rights, and was interviewed by another officer. During the interview, the officer asked defendant to rate his level of intoxication at the time he was driving on a scale from zero to ten, and defendant rated himself at five. Following the interview, another officer administered two breath tests to defendant, one indicating defendant's breath alcohol

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

concentration to be 0.110 and the other indicating 0.111. Subsequent quality assurance tests on the machine indicated that it was working properly at the time of these tests.

¶4 Defendant's license had been suspended previously, with notice to defendant personally served by an officer nearly six years prior to this arrest and three additional orders of suspension mailed to defendant's most recent address on file with the Motor Vehicles Division. The suspensions were still in effect on the night defendant was arrested.

¶5 Defendant was charged with one count of Aggravated Driving or Actual Physical Control While Under the Influence of Intoxicating Liquor or Drugs (Impaired/License Suspended), a class 4 felony, and one count of Aggravated Driving or Actual Physical Control While Under the Influence of Intoxicating Liquor or Drugs (Alcohol Level/License Suspended), a class 4 felony. Defendant was convicted after a jury trial and sentenced on each count to three years of probation and four months of incarceration with credit for sixty-one days of pre-sentence incarceration; sentences to run concurrently. Defendant timely appealed.

¶6 We have read and considered counsel's brief and have searched the entire 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, defendant was adequately represented by counsel at all stages of the proceedings, and the sentence imposed was within the statutory limits. Pursuant to *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984), defendant's counsel's obligations in this appeal are at an end.

¶7 We affirm the convictions and sentences.

/s/
_____
JON W. THOMPSON, Judge

CONCURRING:

/s/
_____
PATRICIA A. OROZCO, Presiding Judge

/s/
_____
DIANE M. JOHNSEN, Judge