IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

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FILED: 04-27-2010
PHILIP G. URRY, CLERK
BY: GH

STATE OF ARIZONA,	)	1 CA-CR 09-0343
	)	
Appellee,	)	DEPARTMENT A
	)	
v.	)	**MEMORANDUM DECISION**
	)	(Not for Publication –
	)	Rule 111, Rules of the
BRADLEY TAYLOR HUDSON,	)	Arizona Supreme Court)
	)	
Appellant.	)	
	)	

Appeal from the Superior Court in Maricopa County

Cause No. CR2008-156954-001 DT

The Honorable Pamela D. Svoboda, Judge *Pro Tem*

AFFIRMED

Terry Goddard, 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

Bradley Taylor Hudson — Tempe
Appellant

W I N T H R O P, Judge

¶1 Bradley Taylor Hudson ("Appellant"), was convicted of two counts of aggravated driving under the influence of an intoxicant ("DUI") after a jury found him guilty of driving while impaired and with a blood alcohol concentration ("BAC") of .08 or more, both while his driver's license was suspended or revoked. The trial court sentenced him to two years probation and concurrent prison terms of four months on each count. He appeals those convictions and sentences, and we have jurisdiction pursuant to Article 6, Section 9 of the Arizona Constitution, and Arizona Revised Statutes ("A.R.S.") section 12-120.21 (2003).

¶2 Appellant's counsel 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 this court that after a search of the record on appeal he finds no arguable question of law. *See Smith v. Robbins*, 528 U.S. 259 (2000); *Anders*, 386 U.S. at 744. Counsel now asks this court to search the record for fundamental error. *See State v. Clark*, 196 Ariz. 530, 537, ¶ 30, 2 P.3d 89, 96 (App. 1999) (stating that this court reviews the entire record for reversible error). This court afforded Appellant the opportunity to file a supplemental brief *in propria persona*, and he has done so. After reviewing the entire record, we affirm Appellant's convictions and sentences.

ANALYSIS

1. Notice

¶3 Appellant acknowledges driving under the influence, but argues the evidence does not support the aggravated DUI convictions. *See* A.R.S. §§ 28-1381 (Supp. 2009), -1383 (Supp. 2009). Specifically, he asserts that at the time of his arrest he did not know that the Motor Vehicle Division ("MVD") had suspended his license. We review the evidence in the light most favorable to sustaining the verdict and resolve all reasonable inferences against Appellant. *See State v. Kiper*, 181 Ariz. 62, 64, 887 P.2d 592, 594 (App. 1994). We review questions of law *de novo*. *Arizona Water Co. v. Arizona Corp. Comm'n*, 217 Ariz. 652, 656, ¶ 10, 177 P.3d 1224, 1228 (App. 2008).

¶4 Aggravated DUI based on a suspended license requires proof that Appellant drove a motor vehicle under the influence of alcohol while his license was suspended, and that he knew or should have known of the suspension. *See* A.R.S. § 28-1383(A)(1); *State v. Cifelli*, 214 Ariz. 524, 527, ¶ 12, 155 P.3d 363, 366 (App. 2007) (citation omitted). The State may prove the "suspended license" element of aggravated DUI, as charged here, by showing that the notice of the suspension was mailed to Appellant's address of record. *See* A.R.S. § 28-3318(D) (2004) ("[s]ervice of the notice . . . is complete on mailing"); *Cifelli*, 214 Ariz. at 527, ¶ 12, 155 P.3d at 366 (holding that

MVD's compliance with mailing statute was sufficient to prove notice by personal delivery). "The state is not required to prove actual receipt of the notice or actual knowledge of the suspension[.]" A.R.S. § 28-3318(E).

¶5 Here, the deputy custodian of records testified that notice of the license suspension was mailed, on two occasions, to Appellant's address of record.[1] Further, along with his MVD records, the trial court admitted the redacted complaint from a DUI arrest that occurred less than one month earlier. Although the complaint, once redacted, did not indicate what infraction Appellant allegedly committed, it did indicate that Appellant's driving privileges would expire fifteen days from the date of service of the citation.[2]

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[1] Appellant received the second notice, sent two days before his September 11, 2008 arrest, after being released from jail.

[2] Appellant argues that the trial court erred when it admitted the redacted complaint because (1) he did not sign it, which he claims is evidence of his lack of knowledge of the license suspension, and (2) its admission prejudiced the jury. We review a trial court's ruling on the admissibility of evidence for a clear abuse of discretion. *State v. Tankersley*, 191 Ariz. 359, 369, ¶ 37, 956 P.2d 486, 496 (1998). Evidence of Appellant's prior DUI was admitted not to show "action in conformity therewith," but rather to show that Appellant should have known the MVD would be suspending his license. Ariz. R. Evid. 404(b). The trial court did not err in admitting the redacted complaint. Regardless, even if the redacted complaint had not been admitted, MVD records were sufficient to show notice.

¶6 In finding Appellant guilty of aggravated DUI, the jury, in its capacity as fact-finder, concluded that the MVD satisfied its statutory duty when it mailed the letters, and Appellant knew or should have known that his license was suspended.[3] The evidence supports Appellant's convictions.

2. Ineffective Assistance of Counsel

¶7 Appellant also argues that defense counsel's failure to stipulate "to all points except one: that [Appellant] knew [his] license was suspended at the time of [his] arrest[,]" resulted in the presentation of evidence that improperly prejudiced the jury. Ineffective assistance of counsel claims are properly raised in Rule 32 proceedings. *State v. Spreitz*, 202 Ariz. 1, 3, ¶ 9, 39 P.3d 525, 527 (2002). "Any such claims improvidently raised in a direct appeal . . . will not be addressed by appellate courts regardless of merit." *Id.* We therefore do not address what amounts to Appellant's ineffective assistance of counsel claim.

3. Remaining Analysis

¶8 We have reviewed the entire record for reversible error and find none. *See Leon*, 104 Ariz. at 300, 451 P.2d at 881; *Clark*, 196 Ariz. at 537, ¶ 30, 2 P.3d at 96. The sentences

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[3] Appellant argues that the statutory presumption of proper delivery was rebutted by testimony. Presentation of conflicting testimony does not mean that Appellant effectively rebutted the statutory presumption. The jury, as finder of fact, makes that determination after weighing the evidence.

were within the statutory limits. Appellant was represented by counsel and was offered the opportunity to speak at sentencing. The proceedings were conducted in compliance with his constitutional and statutory rights and the Arizona Rules of Criminal Procedure.

CONCLUSION

¶9 We affirm Appellant's sentences. After the filing of this decision, defense counsel's obligations pertaining to Appellant's representation in this appeal have ended. Counsel need do no more than inform Appellant of the status of the appeal and of his future options, unless counsel's review reveals an issue appropriate for petition for review to the Arizona Supreme Court. *See State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984). Appellant has thirty days from the date of this decision to proceed, if he desires, with a *pro per* motion for reconsideration or petition for review.

_____/S/_____
LAWRENCE F. WINTHROP, Judge

CONCURRING:

_____/S/_____
MAURICE PORTLEY, Presiding Judge

_____/S/_____
MARGARET H. DOWNIE, Judge