

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 02/23/2012
RUTH A. WILLINGHAM,
CLERK
BY: DLL

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) No. 1 CA-CR 11-0286
)
Appellee,) DEPARTMENT A
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
NICHOLAS BENTZ ROSIN,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. CR2010-111736-001DT

The Honorable Pamela Hearn Svoboda, Judge

Affirmed

Thomas C. Horne, 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

G O U L D, Judge

¶1 Nicholas Bentz Rosin ("Defendant") appeals from his
convictions and the resulting sentences on two counts of

aggravated driving under the influence ("DUI"), class four felonies.

¶12 Defendant'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 entire appellate record, he found no arguable question of law that was not frivolous. Defendant was afforded the opportunity to file a supplemental brief in propria persona, but he has not done so.

¶13 Our obligation in this appeal is to review "the entire record for reversible error." *State v. Clark*, 196 Ariz. 530, 537, ¶ 30, 2 P.3d 89, 96 (App. 1999). We have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution and Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1) (2003), 13-4031 and -4033(A)(1) (2010).¹ Finding no reversible error, we affirm.

Facts and Procedural History²

¶14 Around two o'clock in the morning on October 8, 2009, Defendant was driving southbound on Frank Lloyd Wright

¹ Unless otherwise specified, we cite to the current version of the applicable statutes because no revisions material to this decision have occurred.

² We view the evidence in the light most favorable to sustaining the convictions and resulting sentences. See *State v. Guerra*, 161 Ariz. 289, 293, 778 P.2d 1185, 1189 (1989).

Boulevard. Officer Roach observed as Defendant drove erratically, swerving in and out of his lane and straddling two lanes as he passed through the intersection. Officer Roach pulled Defendant over to conduct a traffic stop; as he approached the car, the officer smelled the odor of alcohol. Upon closer examination he noticed Defendant's eyes were bloodshot and his speech was slurred. When questioned by the Officer, Defendant stated that he had had a drink before leaving work. Defendant refused to submit to field sobriety tests or to have his blood drawn, so Officer Roach obtained a search warrant to conduct a blood draw. The blood test indicated that Defendant's blood alcohol content was 0.178%.

¶15 The State charged Defendant with two counts of aggravated DUI, class four felonies. The State alleged that Defendant had been convicted of two prior DUI offenses within eighty-four months of the current offense, one in 2004, and one in 2006. After a four-day trial, Defendant was convicted on both counts and sentenced to concurrent terms of four months' imprisonment followed by three years' probation for each count. Defendant timely appealed.

Conclusion

¶16 We have read and considered counsel's brief, carefully searched the entire record for reversible error and found none. *Clark*, 196 Ariz. at 541, ¶ 49, 2 P.3d at 100. All of the

proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure and substantial evidence supported the finding of guilt. Defendant was present and represented by counsel at all critical stages of the proceedings. At sentencing, Defendant and his counsel were given an opportunity to speak and the court imposed a legal sentence.

¶7 Counsel's obligations pertaining to Defendant's representation in this appeal have ended. Counsel need do nothing more than inform Defendant of the status of the appeal and his future options, unless counsel's review reveals an issue appropriate for submission to the Arizona Supreme Court by petition for review. *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984). Defendant shall have thirty days from the date of this decision to proceed, if he so desires, with an in propria persona motion for reconsideration or petition for review.³

/S/

ANDREW W. GOULD, Judge

CONCURRING:

/S/

MAURICE PORTLEY, Presiding Judge

/S/

ANN A. SCOTT TIMMER, Judge

³ Pursuant to Arizona Rule of Criminal Procedure 31.18(b), Defendant or his counsel has fifteen days to file a motion for reconsideration. On the Court's own motion, we extend the time to file such a motion to thirty days from the date of this decision.