

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

FILED BY CLERK

MAR 22 2012

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2011-0250
)	DEPARTMENT A
Appellee,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
ANGEL DAVID NUÑEZ,)	the Supreme Court
)	
Appellant.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20104195001

Honorable Teresa Godoy, Judge Pro Tempore

AFFIRMED

Lori J. Lefferts, Pima County Public Defender
By Frank P. Leto

Tucson
Attorneys for Appellant

B R A M M E R, Judge.

¶1 After a jury trial, appellant Angel Nuñez was convicted of two counts of aggravated driving under the influence of an intoxicant (DUI) while his driver license was suspended or revoked. The trial court found Nuñez had two historical prior felony

convictions and sentenced him to enhanced, minimum, eight-year terms in prison, to be served concurrently.¹

¶2 Counsel has filed a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), and *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), avowing he has reviewed the record and found no arguable issue to raise on appeal. Consistent with *Clark*, he has provided “a detailed factual and procedural history of the case with citations to the record,” 196 Ariz. 530, ¶ 32, 2 P.3d at 97, and asks this court to search the record for error. Nuñez has not filed a supplemental brief.

¶3 We conclude substantial evidence supported the jury’s verdicts. *See* A.R.S. §§ 28-1381(A)(1),(2); 28-1383(A)(1). Testimony established a Tucson police officer followed a vehicle he had observed travelling at approximately seventy-five miles per hour on city streets and, after the vehicle had been stopped by other police personnel, saw Nuñez exit the driver’s door. Officers testified that Nuñez’s speech had been slurred, his eyes watery and bloodshot, and he had carried the strong odor of alcohol. An analysis of his blood, taken pursuant to a search warrant within two hours of his driving, indicated

¹The trial court found Nuñez had prior felony convictions but did not expressly denominate them historical prior felony convictions. But our review of the state’s allegations and exhibits, as well as the priors trial and sentencing hearing transcript, persuades us the court clearly found Nuñez had two historical prior felony convictions, subjecting him to an “enhanced sentencing range.” *See* A.R.S. §§ 13-105(22)(c), 13-703(J). Similarly, although the minute entry characterizes the sentences as “mitigated,” as the court did at sentencing, the legislature now has denominated the term imposed as a “minimum” term under § 13-703(J). It nonetheless is clear from the record that the court was aware of the full range of sentences available and, in its discretion, determined eight-year terms were appropriate in light of the aggravating and mitigating circumstances considered at sentencing.

an alcohol content of .209. Further testimony established Nuñez previously had been served with notice that his driver license had been suspended and revoked, and it had remained in that status on the date of his arrest.

¶4 We further conclude substantial evidence supported the trial court’s finding that Nuñez had two historical prior felony convictions, subjecting him to an enhanced sentencing range as a category-three repetitive offender. *See* A.R.S. §§ 13-105(22)(c), 13-703(J). Nuñez’s sentences were authorized by statute and imposed in a lawful manner. *See* § 13-703(J).

¶5 In our examination of the record pursuant to *Anders*, we have found no reversible error and no arguable issue warranting further appellate review. *See Anders*, 386 U.S. at 744. Accordingly, we affirm Nuñez’s convictions and sentences.

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Judge

CONCURRING:

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Presiding Judge