

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

AUG 31 2010

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

THE STATE OF ARIZONA,	)	2 CA-CR 2010-0037
	)	DEPARTMENT B
Appellee,	)	
	)	<u>MEMORANDUM DECISION</u>
v.	)	Not for Publication
	)	Rule 111, Rules of
JAMES STUART REICHERT,	)	the Supreme Court
	)	
Appellant.	)	
_____	)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20092446

Honorable Charles S. Sabalos, Judge

AFFIRMED

Robert J. Hirsh, Pima County Public Defender  
By Rebecca A. McLean

Tucson  
Attorneys for Appellant

K E L L Y, Judge.

¶1 After a jury trial, appellant James Reichert was convicted of aggravated driving under the influence of an intoxicant (DUI) and driving with an alcohol concentration (AC) of .08 or greater, while his license was suspended, canceled, revoked, refused or restricted. He was convicted of additional counts of aggravated DUI based on

the jury's finding that he had committed two or more DUI offenses within the eighty-four months preceding the offense charged. The trial court sentenced him to presumptive, enhanced, ten-year terms of imprisonment, to be served concurrently.<sup>1</sup> Counsel has filed a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), and *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999), avowing she has found no arguably meritorious issues to raise on appeal and asking this court to review the record for fundamental error. Reichert has not filed a supplemental brief.

¶2 We conclude substantial evidence supported findings of all the elements necessary for Reichert's convictions. See A.R.S. §§ 28-1381(A)(1),(2), 28-1383(A)(1),(2). In sum, a witness testified she telephoned 9-1-1 when she saw Reichert, who had driven off the road, re-enter traffic going the wrong direction in the oncoming lane and speed through a stoplight. Further evidence established Reichert had an AC of .185 within two hours of driving, his license had been revoked, and he had been convicted of two separate aggravated DUI offenses in 2002, for which he had served more than two years in prison. Reichert's sentences were within the range authorized and were imposed in a lawful manner. See A.R.S. §§ 13-105(22)(a)(v), 13-703(C),(J).

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<sup>1</sup>As counsel has acknowledged, these enhanced sentences were imposed "after a priors trial" to determine Reichert's status as a repetitive offender. Although the trial court's sentencing minute entry characterizes these offenses as "nonrepetitive," it is clear from the sentencing transcript that Reichert was sentenced as a category three repetitive offender under A.R.S. § 13-703(C). See *State v. Hanson*, 138 Ariz. 296, 304-05, 674 P.2d 850, 858-59 (App. 1983) ("Where there is a discrepancy between the oral sentence and the written judgment, the oral pronouncement of sentence controls.").

¶3 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 Reichert’s convictions and sentences.

/s/ Virginia C. Kelly  
VIRGINIA C. KELLY, Judge

CONCURRING:

/s/ Garye L. Vásquez  
GARYE L. VÁSQUEZ, Presiding Judge

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