

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: 5/9/2013  
RUTH A. WILLINGHAM,  
CLERK  
BY: mjt

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

STATE OF ARIZONA, ) 1 CA-CR 12-0096  
)  
Appellee, ) DEPARTMENT B  
)  
v. ) **MEMORANDUM DECISION**  
) (Not for Publication -  
THOMAS ALAN BARNES, ) Rule 111, Rules of the  
) Arizona Supreme Court)  
Appellant. )  
)  
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2011-106884-001

The Honorable Phemonia L. Miller, Judge

**Affirmed**

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Thomas C. Horne, Attorney General Phoenix  
By Joseph T. Maziarz, Acting Chief Counsel  
Criminal Appeals/Capital Litigation Section  
Attorneys for Appellee

James J. Haas, Maricopa County Public Defender Phoenix  
By Cory Engle, Deputy Public Defender  
Attorneys for Appellant

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**G O U L D**, Judge

¶1 Defendant-Appellant Thomas Alan Barnes ("Barnes")  
appeals from his convictions and resulting sentences of two  
counts of Aggravated Driving or Actual Physical Control while

under the Influence of Intoxicating Liquor or Drugs, class 4 felonies.

¶2 Counsel for Barnes filed a brief in accordance with *Anders v. California*, 386 U.S. 738 (1967) and *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999). Finding no arguable issues to raise, counsel requests that this Court search the record for fundamental error. Barnes was granted leave to file a supplemental brief *in propria persona* on or before February 19, 2013 and did not do so.

¶3 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), 13-4031 and 13-4033(A)(1) (West 2013).<sup>1</sup> Finding no reversible error, we affirm.

### ***Facts and Procedural History***<sup>2</sup>

¶4 At approximately 2:27 in the morning on September 16, 2010, two police officers spotted Barnes's truck swerving across lanes of traffic on the freeway. When the officers pulled over

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

<sup>2</sup> 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).

Barnes to conduct a traffic stop, they detected an odor of alcohol on Barnes and noted he had bloodshot, watery eyes. Barnes admitted to officers he had consumed six or seven beers. The officers transported Barnes to a DUI van where his blood was drawn, showing a blood alcohol concentration of .249. Barnes also indicated he was impaired by demonstrating all six cues of the horizontal gaze nystagmus (HGN) test.

¶5 The State charged Barnes with Count 1: Aggravated Driving or Actual Physical Control while under the Influence of Intoxicating Liquor or Drugs (Impaired) and Count 2: Aggravated Driving or Actual Physical Control while under the Influence of Intoxicating Liquor or Drugs (BAC greater than .08).

¶6 At trial, a custodian of records for the Arizona Motor Vehicle Division testified that, on the day he was pulled over, Barnes's license was suspended. The custodian of record also testified that Barnes had been notified of this suspension by a letter sent on October 20, 2009.

¶7 The jury convicted Barnes as charged on Counts 1 and 2. The court sentenced him to three years of probation and four months of incarceration as to each count, to be served concurrently.

### ***Discussion***

¶8 We have read and considered the entire record and have found no meritorious grounds for reversal of Barnes's

convictions or for modification of the sentences imposed. *Clark*, 196 Ariz. at 541, ¶ 50, 2 P.3d at 100. The record reflects Barnes received a fair trial. He was present at all critical stages of the proceedings and was represented by counsel.

¶19 The court held appropriate pretrial hearings. Although the court did not conduct a voluntariness hearing, the record does not suggest a question about the voluntariness of Barnes's statements to police. See *State v. Smith*, 114 Ariz. 415, 419, 561 P.2d 739, 743 (1977) (a defendant must object to the admission of statements before he can claim error and the trial court is not required to *sua sponte* determine the voluntary nature of evidence).

¶10 All proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure, and substantial evidence supported the finding of guilt. At sentencing, Barnes and his counsel were given an opportunity to speak, and the court imposed a legal sentence. Accordingly, we affirm.

### ***Conclusion***

¶11 Counsel's obligations pertaining to Barnes's representation in this appeal have ended. Counsel need do nothing more than inform Barnes 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). Barnes 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.<sup>3</sup>

/S/  
ANDREW W. GOULD, Judge

CONCURRING:

/S/  
PATRICIA K. NORRIS, Presiding Judge

/S/  
RANDALL M. HOWE, Judge

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<sup>3</sup> 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.