

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: 2/12/2013
RUTH A. WILLINGHAM,
CLERK
BY: mjt

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,)
) No. 1 CA-CR 12-0371
)
 Appellee,) DEPARTMENT E
)
 v.) MEMORANDUM DECISION
)
 JEFFRIS FITZGERALD CLARK,) (Not for Publication -
) Rule 111, Rules of the
 Appellant.) Arizona Supreme Court)
)
)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2011-123216-001

The Honorable Robert E. Miles, Judge

AFFIRMED

Thomas C. Horne, Arizona 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 Stephen R. Collins, Deputy Public Defender
Attorneys for Appellant

H A L L, Judge

¶1 Jeffris Fitzgerald Clark (defendant) appeals from his convictions and sentences imposed. For the reasons set forth below, we affirm.

¶2 Defendant's appellate 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 that, after a diligent search of the record, he was unable to find any arguable grounds for reversal. This court granted defendant an opportunity to file a supplemental brief, which he has not done. See *State v. Clark*, 196 Ariz. 530, 537, ¶ 30, 2 P.3d 89, 96 (App. 1999).

¶3 We review for fundamental error, error that goes to the foundation of a case or takes from the defendant a right essential to his defense. See *State v. King*, 158 Ariz. 419, 424, 763 P.2d 239, 244 (1988). We view the evidence presented at trial in a light most favorable to sustaining the verdict. *State v. Cropper*, 205 Ariz. 181, 182, ¶ 2, 68 P.3d 407, 408 (2003).

¶4 On October 19, 2011, defendant was charged by indictment with: Count One, aggravated driving while under the influence of intoxicating liquor or drugs with a suspended license, a class four felony; Count Two, aggravated driving with an alcohol concentration of 0.08 or more with a suspended license, a class four felony; Count Three, possession or use of

marijuana, a class six felony; and Count Four, possession of drug paraphernalia, a class six felony. Before trial, the trial court granted the state's motion to dismiss Counts Three and Four.

¶15 The following evidence was presented at trial. On December 8, 2010, while off-duty, Scottsdale police officer Ryan McKinnon observed a vehicle traveling southbound on the Loop 101 Freeway and "swerving" between lanes. Because Officer McKinnon's vehicle was not equipped with overhead lights, he did not attempt a traffic stop. Instead, he called 9-1-1 and continued following the vehicle southbound on Loop 101 and then eastbound on US 60. Officer McKinnon observed the vehicle "drifting between the two lanes" and "it actually left the right lane and was close to striking the concrete area that made up . . . the transition ramp."

¶16 Gilbert police officer Robert Jordan received a dispatch call of a potential DUI driver on December 8, 2010. He observed the vehicle "swerve in an out of its lane." After Officer Jordan had activated his emergency lights, defendant continued driving for about three-quarters of a mile, stopped the vehicle, but then started driving again until he made a right turn and came to a stop. Officer Jordan approached the vehicle and noticed that defendant's head was down. He asked defendant for the keys to the vehicle and how much alcohol

defendant had consumed. Defendant gave him the keys and said, "None." Defendant "seemed dazed," had "red, bloodshot, watery eyes," and his speech was "slurred like [he was] speaking with a thick tongue." Officer Jordan also detected a strong odor of an alcoholic beverage "emanating" from him. Officer Jordan helped defendant out of the vehicle and attempted to have him perform field sobriety tests, but had limited success. For example, defendant was unable follow a pen with his eyes. Defendant refused additional tests. Officer Jordan arrested defendant and placed him in the police car, where defendant fell asleep. Thereafter, Officer Jordan searched the vehicle and found a "notice of suspension" from the Arizona Motor Vehicle Division (MVD). Defendant was transported to the detention facility where a phlebotomist drew his blood.

¶17 A criminalist with the Chandler Police Department testified that the blood was drawn two hours and seven minutes after defendant had been pulled over. The criminalist testified that she performed a retrograde analysis and determined that the blood alcohol concentration range for an average person two hours after the stop would have been between .270 and .272.

¶18 An MVD employee testified that defendant's license had been suspended on October 6, 2008 for ninety days. Defendant was required to go to the MVD and pay a reinstatement fee and reapplication fee in order to remove the suspension from his

license, which he failed to do. If defendant had paid the mandatory fees, he would have had a new license issue date following the suspension. MVD records entered in evidence, however, reflected that defendant had most recently obtained a new license on July 9, 2008, prior to his license being suspended. Thus, defendant's license status remained suspended on December 8, 2010.

¶9 After the close of the State's evidence, the court denied defendant's motion for a directed verdict based on a lack of evidence proving that defendant's driver license was suspended.

¶10 Defendant testified that his original driver license was suspended in July 2008, but that he had subsequently received a document that voided the order of suspension. Defendant stated that following the voided order, he obtained a new license from the MVD. Defendant also testified that on the night he was arrested, December 8, 2010, he "had had a lot [of alcohol] to drink," his judgment had been poor, and he did not want to leave his vehicle at the bar.

¶11 Pursuant to A.R.S. section 28-1383(A)(1) (Supp. 2012), "A person is guilty of aggravated driving or actual physical control while under the influence of intoxicating liquor or drugs if the person . . . [drives under the influence] while the person's driver license or privilege to drive is suspended."

Although defendant testified that his driving privileges had been restored after his license had been suspended, the State presented evidence to the contrary. The jury was properly instructed that the State was required to prove that defendant knew or had reason to know that he was driving on a suspended license when stopped.

¶12 After a four-day trial, the jury found defendant guilty as charged. The trial court sentenced defendant to four months in the Department of Corrections on Counts One and Two, to be served concurrently, with thirty-six days of presentence-incarceration credit.

¶13 We have read and considered counsel's brief and have searched the entire record for reversible error. *See Leon*, 104 Ariz. at 300, 451 P.2d at 881. We find none. All of the proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure. Defendant was given an opportunity to speak before sentencing, and the sentences imposed were within statutory limits. Furthermore, based on our review of the record, there was sufficient evidence for the jury to find that defendant committed the offenses for which he was convicted.

¶14 After the filing of this decision, counsel's obligations pertaining to defendant's representation in this appeal have ended. Counsel need do no 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. See *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984). Defendant 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. Accordingly, defendant's convictions and sentences are affirmed.

_/s/ PHILIP HALL, Judge

CONCURRING:

_/s/ MARGARET H. DOWNIE, Presiding Judge

_/s/ MAURICE PORTLEY, Judge