DIVISION ONE
FILED: 4/9/2013
RUTH A. WILLINGHAM, CLERK
BY: mjt

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,	)	1 CA-CR 12-0398
	)	
Appellee,	)	DEPARTMENT A
	)	
v.	)	**MEMORANDUM DECISION**
	)	(Not for Publication -
BRANDY LYNN WELLS,	)	Rule 111, Rules of the
	)	Arizona Supreme Court)
Appellant.	)	
	)	

Appeal from the Superior Court in Maricopa County

Cause No. CR2011-101582-001

The Honorable Carolyn K. Passamonte, Commissioner

AFFIRMED

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

Marty Lieberman, Maricopa County Legal Defender — Phoenix
By Cynthia D. Beck, Deputy Legal Defender
Attorneys for Appellant

O R O Z C O, Judge

¶1 Brandy Lynn Wells (Defendant) appeals her convictions and sentences for two counts of aggravated driving under the influence (DUI), class 4 felonies.

¶2 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, she found no arguable question of law that was not frivolous. Defendant was afforded the opportunity to file a supplemental brief in propria persona, but she has not done 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 (2003), 13-4031 (2010), and -4033.A.1 (2010). Finding no reversible error, we affirm.

FACTS AND PROCEDURAL HISTORY

¶4 City of Phoenix Police Officer T.G. (Officer T.G.) testified that on August 31, 2010, at approximately 1:15 a.m., he observed a vehicle driving without any headlights. He also stated that the vehicle was driving slowly and appeared to have a flat tire. Officer T.G. then proceeded to conduct a traffic stop. He testified that when Defendant got out of her vehicle, she "staggered, and then grabbed onto the car and . . . used the car for balance" as she went to look at the flat tire.

¶5 Officer T.G. made contact with Defendant and stated that he "smelled a strong odor of alcohol coming from her breath" and "noticed that her eyes were bloodshot and watery" and "[h]er speech was slurred." He testified that upon asking Defendant how much she had to drink that night, she stated she "had two or three but wished it was more." After running a check on Defendant's name in the system, Officer T.G. noted that her driver's license was suspended.

¶6 Officer T.G. stated that he performed a field sobriety test. He testified that based on the results of the test, he concluded that Defendant had a blood alcohol concentration (BAC) of 0.08 or higher and placed her under arrest. He then took her to the police precinct where her blood was drawn at approximately 2:00 a.m. The State's forensic science expert testified that the result of Defendant's blood draw analysis indicated a BAC of 0.365.

¶7 Defendant was charged with two counts of aggravated DUI of intoxicating liquor or drugs. At trial, Defendant acknowledged that she was driving impaired on August 31, 2010 and did not dispute that she had a BAC of 0.365 at the time; however, she denied having knowledge on that date that her driver's license was suspended. She claimed that she did not receive the letters regarding her suspended driver's license

because she was no longer living at the address to which the letters were sent. However, she admitted that she was at that specific address on August 31, 2010, the date of this incident.

¶8 J. Owens, Jr. (Owens), an investigator and deputy custodian of records for the Motor Vehicle Division (MVD), testified that based on MVD records, Defendant's driver's license was suspended at the time of her arrest on August 31, 2010. He stated that in July and August 2010, eleven letters informing Defendant of the suspension were mailed to the address Defendant provided to the MVD. However, Owens conceded that he did not know if Defendant actually received the letters.

¶9 Defendant was found guilty of aggravated DUI of intoxicating liquor while driving with a suspended license and aggravated DUI with a BAC of 0.08 while driving with a suspended license. The trial court sentenced Defendant to four months' incarceration, followed by three years of probation for each count, to be served concurrently. Defendant timely appealed.

DISCUSSION

¶10 When considering the sufficiency of the evidence, "we view the evidence in the light most favorable to sustaining the verdict and reverse only if no substantial evidence supports the conviction." *State v. Pena*, 209 Ariz. 503, 505, ¶ 7, 104 P.3d 873, 875 (App. 2005). "'Substantial evidence' is evidence that

reasonable persons could accept as adequate and sufficient to support a conclusion of defendant's guilt beyond a reasonable doubt." *State v. Jones*, 125 Ariz. 417, 419, 610 P.2d 51, 53 (1980). "Reversible error based on insufficiency of the evidence occurs only where there is a complete absence of probative facts to support the conviction." *State v. Scott*, 113 Ariz. 423, 424-25, 555 P.2d 1117, 1118-19 (1976).

¶11 Under Arizona statutes, a person accused of DUI can be charged with multiple DUI-related offenses. *See State v. Cooperman*, 230 Ariz. 245, __, ¶ 6, 282 P.3d 446, 449 (App. 2012); *see also* A.R.S. §§ 28-1381 to -1383 (2012 & Supp. 2012).[1] For count 1, the State must prove that Defendant was driving under the influence of intoxicating liquor and impaired to the slightest degree, while her driver's license was suspended, canceled, or revoked. A.R.S. § 28-1383.A.1; *see also* A.R.S. § 28-1381.A.1. For count 2, the State must prove that Defendant had a BAC of 0.08 or higher within two hours of driving, if the BAC results from alcohol consumed before or during driving, and that her driver's license was suspended, canceled, or revoked. A.R.S. § 28-1383.A.1; *see also* A.R.S. § 28-1381.A.2.

¶12 Defendant admitted at trial that she was driving impaired and does not deny that she was under the influence of

[1] Absent material revisions, we cite to the current version of applicable statutes.

intoxicating liquor. In addition, Defendant did not dispute the BAC evidence.

¶13 For both counts, the State was required to prove that Defendant was served with notice of the suspension of the license, but it "is not required to prove [Defendant's] actual receipt of the notice or actual knowledge of the suspension." A.R.S. § 28-3318.E. (2004). "The department shall send the notice by mail to the address provided to the department on the licensee's application," and "[s]ervice of the notice . . . is complete on mailing." A.R.S. § 28-3318.C-D. Defendant denied having knowledge that her driver's license was suspended; however, Owens testified that the MVD had sent multiple letters to the address Defendant provided to the MVD that informed Defendant of the suspension.

¶14 Thus, based on the testimony at trial, substantial evidence supported the guilty verdicts on both counts of aggravated DUI.

CONCLUSION

¶15 We have read and considered counsel's brief and have searched the entire record for reversible error but found none. *See Leon*, 104 Ariz. at 300, 451 P.2d at 881. The record indicates that Defendant was represented by counsel at all stages of the proceedings, and the trial court afforded

Defendant all of her rights under the Constitution, Arizona statutes, and the Arizona Rules of Criminal Procedure. *See Clark*, 196 Ariz. at 541, ¶ 50, 2 P.3d at 100. The sentence imposed by the trial court was within the statutory limits. *Id.*

¶16 After the filing of this decision, counsel's obligations pertaining to Defendant's representation in this appeal have ended. *See State v. Shattuck*, 140 Ariz. 582, 584, 684 P.2d 154, 156 (1984). Counsel need do no more than inform Defendant of the status of the appeal and Defendant's future options, unless counsel's review reveals an issue appropriate for submission to the Arizona Supreme Court by petition for review. *Id.* at 585, 684 P.2d at 157. Defendant shall have thirty days from the date of this decision to proceed, if she desires, with an in propria persona motion for reconsideration or petition for review.

¶17 For the foregoing reasons, Defendant's convictions and sentences are affirmed.

/S/
_____
PATRICIA A. OROZCO, Presiding Judge

CONCURRING:
/S/
_____
PETER B. SWANN, Judge

/S/
_____
LAWRENCE F. WINTHROP, Judge