

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: 6/25/2013  
RUTH A. WILLINGHAM,  
CLERK  
BY: mjt

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

STATE OF ARIZONA, ) No. 1 CA-CR 12-0583  
)  
Appellee, ) DEPARTMENT D  
)  
v. ) **MEMORANDUM DECISION**  
)  
RODNEY R. BAGWELL, ) (Not for Publication -  
) Rule 111, Rules of the  
Appellant. ) Arizona Supreme Court)  
)

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Appeal from the Superior Court in Maricopa County

Cause No. CR2011-160020-001

The Honorable Virginia L. Richter, Judge Pro Tempore

**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

Maricopa County Public Defender's Office Phoenix  
By Peg Green Deputy Public Defender  
Attorneys for Appellant

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G E M M I L L, Judge

¶1 Rodney Bagwell appeals from his conviction and sentence of aggravated DUI, a class 4 felony. Bagwell's counsel filed a brief in compliance with *Anders v. California*, 386 U.S.

738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), stating that she has searched the record and found no arguable question of law and requesting that this court examine the record for reversible error. Bagwell was afforded the opportunity to file a *pro se* supplemental brief but did not do so. See *State v. Clark*, 196 Ariz. 530, 537, ¶ 30, 2 P.3d 89, 96 (App. 1999). For the following reasons, we affirm.

#### **FACTS AND PROCEDURAL HISTORY**

¶12 "We view the facts and all reasonable inferences therefrom in the light most favorable to sustaining the convictions." *State v. Powers*, 200 Ariz. 123, 124, ¶ 2, 23 P.3d 668, 669 (App. 2001).

¶13 At 3:30 in the morning on November 27, 2011, Officer Lavia conducted a traffic stop on Bagwell. Upon contacting Bagwell, Officer Lavia noticed the strong odor of alcohol and that Bagwell was stumbling, had slurred speech and bloodshot watery eyes. Officer Lavia conducted a horizontal gaze nystagmus test, and Bagwell displayed all six cues consistent with alcohol impairment. Bagwell told Officer Lavia that he was driving home from Circle K; he also admitted he had been drinking.

¶14 Officer Lavia arrested Bagwell and submitted him to a blood test. The blood test determined that Bagwell had a blood alcohol concentration of .177 percent. Furthermore, Bagwell was

aware that his privilege to drive was suspended, and had not been reinstated, prior to November 27, 2011.

¶15 The State charged Bagwell with two counts of aggravated DUI, class 4 felonies. After a three-day trial, Bagwell was convicted on both counts. However, because the verdict forms duplicated the described offense for Count II in Count I, the court struck Count I and sentenced Bagwell only on Count II. The court suspended imposition of sentence and placed Bagwell on probation for three years. Bagwell timely appealed and we have jurisdiction pursuant to the Arizona Constitution, Article 6, Section 9, and Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1) (2003), 13-4031 and 13-4033 (2010).<sup>1</sup>

#### DISCUSSION

¶16 Having considered defense counsel's brief and examined the record for reversible error, *see Leon*, 104 Ariz. at 300, 451 P.2d at 881, we find none. The evidence presented supports the conviction and the sentence imposed falls within the range permitted by law. As far as the record reveals, Bagwell was represented by counsel at all stages of the proceedings, and these proceedings were conducted in compliance with his constitutional and statutory rights and the Arizona Rules of Criminal Procedure.

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<sup>1</sup> We cite the current version of applicable statutes because no revisions material to this decision have occurred since the events in question.

¶17 Pursuant to *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984), counsel's obligations in this appeal have ended. Counsel need do no more than inform Bagwell of the disposition 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. Bagwell has thirty days from the date of this decision in which to proceed, if he desires, with a *pro se* motion for reconsideration or petition for review.

**CONCLUSION**

¶18 The conviction and sentence are affirmed.

/s/

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JOHN C. GEMMILL, Presiding Judge

CONCURRING:

/s/

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JON W. THOMPSON, Judge

/s/

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DONN KESSLER, Judge