

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Appellee*,

v.

WAYNE MITCHELL, *Appellant*.

No. 1 CA-CR 17-0667
FILED 9-20-2018

Appeal from the Superior Court in Maricopa County
No. CR2015-030688-001
The Honorable Annielaurie Van Wie, Judge *Pro Tempore*

AFFIRMED

COUNSEL

Maricopa County Public Defender's Office, Phoenix
By Joel M. Glynn
Counsel for Appellant

Arizona Attorney General's Office, Phoenix
By Joseph T. Maziarz
Counsel for Appellee

STATE v. MITCHELL
Decision of the Court

MEMORANDUM DECISION

Judge James P. Beene delivered the decision of the Court, in which Presiding Judge Maria Elena Cruz and Judge Jennifer B. Campbell joined.

B E E N E, Judge:

¶1 This appeal was timely filed in accordance with *Anders v. California*, 386 U.S. 738 (1967) and *State v. Leon*, 104 Ariz. 297 (1969) following Wayne Mitchell's ("Mitchell") convictions for aggravated driving under the influence ("DUI") for driving while his license was suspended or revoked, aggravated DUI for having a blood alcohol content of .08 or greater while his license was suspended or revoked, both class 4 felonies, as well as two additional convictions for each of these two charges having been convicted within an 84-month period of two prior DUI convictions, both class 4 felonies. Mitchell's counsel searched the record on appeal and found no arguable question of law that is not frivolous. *See State v. Clark*, 196 Ariz. 530 (App. 1999). Counsel now asks us to search the record for fundamental error. After reviewing the entire record, we affirm Mitchell's convictions and sentences.

FACTS¹ AND PROCEDURAL HISTORY

¶2 On December 11, 2014, at approximately 2:05 a.m., a police officer observed a vehicle weaving back and forth within the driving lane and stopping in the middle of the crosswalk at a red light.

¶3 The officer initiated a traffic stop and asked the driver for his license and proof of insurance. The driver fumbled with his wallet and then handed the officer an Arizona ID card, which identified him as Mitchell. The officer noted that Mitchell appeared to be impaired; his speech was slurred, his eyes were bloodshot and watery, and there was an odor of alcohol coming from inside the car.

¹ "We view the facts in the light most favorable to sustaining the convictions with all reasonable inferences resolved against the defendant." *State v. Harm*, 236 Ariz. 402, 404 n.2, ¶¶ 2-3 (App. 2015) (citation omitted).

STATE v. MITCHELL
Decision of the Court

¶4 The officer asked Mitchell to exit his car in order to conduct field sobriety tests. Mitchell's performance on these tests indicated that he was impaired. Mitchell also admitted to drinking five to six beers and stated he "shouldn't have been driving."

¶5 The officer transported Mitchell to the Mesa Police Department where he was informed of his *Miranda*² rights and two blood alcohol concentration ("BAC") tests were administered. After being advised of his *Miranda* rights, Mitchell admitted to drinking between six and seven, 12-ounce Bud Light beers, as well as to being "between a four and a five" on a one to ten sobriety scale. The results of the BAC tests were .251 and .250. A Motor Vehicle Division records check revealed that Mitchell's driving privileges were suspended and he had not been issued an Arizona driver's license since 1989.

¶6 Mitchell was charged with four counts of aggravated driving while under the influence of intoxicating liquor, all class 4 felonies. Mitchell was found guilty on all counts. In a separate bench trial, Mitchell admitted two prior felony convictions for aggravated DUI. Mitchell was sentenced to a slightly mitigated, concurrent term of seven years' incarceration. Mitchell timely appealed his conviction. We have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution, and Arizona Revised Statutes sections 12-120.21(A)(1), 13-4031 and -4033(A)(1).

DISCUSSION

¶7 The record reflects no fundamental error in pretrial or trial proceedings. Mitchell was represented by counsel at all critical stages in the proceedings. Because Mitchell's fast-tracked plea offer expired prior to his acceptance or rejection, the superior court did not conduct a *Donald* hearing.³

¶8 The jury was properly composed of eight members and two alternates. The State presented direct and circumstantial evidence sufficient for a reasonable jury to convict. The court properly denied Mitchell's motion for a directed verdict and appropriately instructed the jury on the elements of the charges. The key instructions concerning burden of proof, presumption of innocence, reasonable doubt, and the

² *Miranda v. Arizona*, 384 U.S. 436 (1966).

³ *State v. Donald*, 198 Ariz. 406 (App. 2000).

STATE v. MITCHELL
Decision of the Court

necessity of a unanimous verdict were properly administered. The jury returned unanimous guilty verdicts on all counts.

¶9 The superior court received a presentence report, accounted for aggravating and mitigating factors, and provided Mitchell an opportunity to speak at sentencing. The superior court properly sentenced Mitchell to the slightly mitigated, concurrent sentence of seven years' incarceration for each count.

CONCLUSION

¶10 We have reviewed the entire record for reversible error and find none; therefore, we affirm the convictions and sentences.

¶11 After the filing of this decision, defense counsel's obligation pertaining to Mitchell's representation in this appeal will end. Defense counsel need do no more than inform Mitchell of the outcome of this appeal and his future options, unless, upon review, counsel finds "an issue appropriate for submission" to the Arizona Supreme Court by petition for review. *State v. Shattuck*, 140 Ariz. 582, 584-85 (1984). On the Court's own motion, Mitchell has 30 days from the date of this decision to proceed, if he wishes, with a *pro per* motion for reconsideration. Further, Mitchell has 30 days from the date of this decision to proceed, if he wishes, with a *pro per* petition for review.



AMY M. WOOD • Clerk of the Court
FILED: AA