

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  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

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STATE OF ARIZONA, *Appellee*,

v.

MICHAEL EDWARD GAY, *Appellant*.

No. 1 CA-CR 18-0013  
FILED 12-20-2018

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Appeal from the Superior Court in Maricopa County  
No. CR2016-112742-001  
The Honorable Annielaurie Van Wie, Judge *Pro Tempore*

**AFFIRMED**

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COUNSEL

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

Maricopa County Public Defender's Office, Phoenix  
By Mark E. Dwyer  
*Counsel for Appellant*

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**MEMORANDUM DECISION**

Judge David D. Weinzweig delivered the decision of the Court, in which Presiding Judge Diane M. Johnsen and Judge Paul J. McMurdie joined.

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WEINZWEIG, Judge:

¶1 Michael Edward Gay timely appeals his convictions and sentences for two counts of aggravated driving under the influence ("DUI"). After searching the record and finding no arguable, non-frivolous question of law, Gay's counsel filed a brief in accordance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297 (1969), asking this court to search the record for fundamental error. Gay had the opportunity to file a supplemental brief but did not do so. After reviewing the record, we affirm Gay's convictions and sentences.

#### FACTS AND PROCEDURAL BACKGROUND

¶2 This is a drunk driving case. Officer Kuehn found Gay in the driver's seat of a car stopped in the far-right lane of a four-lane road around 3:00 a.m. Gay and his girlfriend had just left a night club where Gay had been drinking. The engine was running and the car was in drive when Officer Kuehn approached. Gay's foot was on the brake but "kept slipping off," causing the car to "roll forward an inch or two." Gay reeked of alcohol and had trouble putting the car in park. Kuehn asked Gay to exit the vehicle. Gay failed two field sobriety tests and was arrested for driving under the influence.

¶3 Officer Wearne drew a sample of Gay's blood at 3:55 a.m. Gay admitted to Wearne that he had been driving even though his driver's license was suspended or revoked. Blood tests showed Gay's blood alcohol content at an impaired level of 0.177, and motor vehicle records revealed Gay's license was indeed revoked and suspended at the time and he had been told not to drive.

¶4 Gay and his girlfriend testified at trial that Gay had not been driving the car. They claimed his girlfriend had been driving when the driver's seat randomly moved forward, pinning her against the steering wheel when she hit the brakes. Gay supposedly moved to the driver's seat to fix the problem shortly before Officer Kuehn arrived.

¶5 The State charged Gay with two counts of aggravated DUI: (1) driving while impaired with a revoked or suspended license and (2) driving with a blood alcohol concentration of 0.08 or more and with a revoked or suspended license. A.R.S. §§ 28-1381(A)(1)-(2), -1383(A)(1). A jury found him guilty as charged after a three-day trial. At sentencing, the superior court found Gay had one historical prior felony conviction and sentenced him as a category two repetitive offender. Gay received

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concurrent, mitigated terms of 2.5 years for each count, with 45 days' credit for presentence incarceration. The court also imposed several fines and fees, as well as community supervision. Gay timely appealed. We have jurisdiction pursuant to Ariz. Const. art. 6, § 9, and A.R.S. §§ 12-120.21(A)(1), 13-4031 and 13-4033(A)(1).

## DISCUSSION

¶6 We have read and considered counsel's brief and have reviewed the record for reversible error. *See Leon*, 104 Ariz. at 300. We find none.

¶7 Gay was present and represented by counsel at all stages of the proceedings against him. The record reflects that the superior court afforded Gay all his constitutional and statutory rights, and that the proceedings were conducted in accordance with the Arizona Rules of Criminal Procedure. The court conducted appropriate pretrial hearings, and the evidence presented at trial and summarized above was sufficient to support the jury's verdicts. Gay's sentences fall within the range prescribed by law, with sufficient credit given for presentence incarceration.

## CONCLUSION

¶8 Gay's convictions and sentences are affirmed. Counsel's obligations in this appeal will end once Gay is informed of the outcome and his future options, unless counsel finds "an issue appropriate for submission" to the Arizona Supreme Court by petition for review. *See State v. Shattuck*, 140 Ariz. 582, 584-85 (1984). On the court's own motion, Gay has 30 days from the date of this decision to proceed with a *pro se* motion for reconsideration or petition for review.



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