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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  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

RICKY A. BARRAZA, *Appellant*.

No. 1 CA-CR 18-0846

FILED 12-5-2019

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Appeal from the Superior Court in Apache County

No. S0100CR201500299

The Honorable Michael D. Latham, Judge

**AFFIRMED IN PART AND VACATED IN PART**

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COUNSEL

Arizona Attorney General's Office, Phoenix

By Joseph T. Maziarz

*Counsel for Appellee*

Law Office of Elizabeth M. Hale, Lakeside

By Elizabeth M. Hale

*Counsel for Appellant*

**MEMORANDUM DECISION**

Presiding Judge Randall M. Howe delivered the decision of the Court, in which Judge Jennifer M. Perkins and Judge David D. Weinzwieg joined.

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**H O W E**, Judge:

¶1 This appeal is filed in accordance with *Anders v. California*, 386 U.S. 738 (1967) and *State v. Leon*, 104 Ariz. 297 (1969). Counsel for Ricky A. Barraza has advised this Court that he has found no arguable questions of law and asks us to search the record for fundamental error. Barraza was convicted of aggravated DUI and driving on a suspended license. Barraza was given an opportunity to file a supplemental brief in propria persona; he has not done so. After reviewing the record, we affirm Barraza's conviction and sentence for aggravated DUI but vacate his conviction for driving on a suspended license.

**FACTS AND PROCEDURAL HISTORY**

¶2 We view the facts in the light most favorable to sustaining the judgment and resolve all reasonable inferences against Barraza. *See State v. Fontes*, 195 Ariz. 229, 230 ¶ 2 (App. 1998). In February 2015, Barraza left a bar in Springerville, AZ and drove to a nearby gas station to get cigarettes. A police officer saw Barraza leave the bar and, based on his prior encounters with Barraza, knew his driver's license was suspended. After confirming with dispatch that Barraza's driver's license was still suspended, the police officer conducted a traffic stop.

¶3 While speaking with Barraza, the police officer noticed that Barraza smelled of alcohol and had bloodshot and watery eyes. Barraza admitted to having three drinks and said he drove while his license was suspended because he wanted to get cigarettes. The police officer asked Barraza to perform several standard field sobriety tests, including the Walk and Turn test, the One-Leg Stand test, and the Finger-to-Nose test. Barraza showed clues of impairment on each of those three tests. Barraza was then arrested for DUI and transported to the Springerville Police Department where he consented to a breath test. After Barraza provided two breath samples, the results showed that he had a breath alcohol content of 0.144% and 0.148%.

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¶4 Barraza was charged with aggravated DUI, a class 4 felony, because he was driving on a suspended license while under the influence of alcohol. Barraza was also charged with driving on a suspended license, a class 1 misdemeanor. The parties stipulated that Barraza had a suspended driver's license at the time of the offense and, after a two-day jury trial, Barraza was convicted of aggravated DUI and driving on a suspended license.

¶5 The trial court conducted the sentencing hearing in compliance with Barraza's constitutional rights and Arizona Rule of Criminal Procedure 26. The trial court found Barraza's family support and lack of prior felony convictions as mitigating circumstances. Barraza was sentenced to 1.5 years' imprisonment with 304 days of presentence incarceration credit.

**DISCUSSION**

¶6 We review Barraza's convictions and sentences for fundamental error. *See State v. Flores*, 227 Ariz. 509, 512 ¶ 12 (App. 2011). Counsel for Barraza has advised this Court that after a diligent search of the entire record, he has found no arguable question of law.

¶7 Barraza's conviction for driving on a suspended license violated his Double Jeopardy rights. The Double Jeopardy Clauses of both the United States and Arizona Constitutions prohibit imposing multiple punishments for the same or lesser-included offense. *See* U.S. Const. amend. V; Ariz. Const. art. 2, § 10; *see also State v. Siddle*, 202 Ariz. 512, 515 ¶¶ 7-8 (App. 2002); *State v. Welch*, 198 Ariz. 554, 556 ¶ 6 (App. 2000). "To constitute a lesser-included offense, the offense must be composed solely of some but not all of the elements of the greater crime so that it is impossible to have committed the crime charged without having committed the lesser one." *State v. Celaya*, 135 Ariz. 248, 251 (1983). Offenses are not the same if each requires proof of a fact that the other does not. *State v. Barber*, 133 Ariz. 572, 576 (App. 1982).

¶8 The crime of aggravated DUI under A.R.S. § 28-1383(A)(1) requires proof that a person was driving or in actual physical control of a car while under the influence of alcohol and while that person's driver's license was suspended. Driving with a suspended license is a lesser-included offense of aggravated DUI because, under § 28-1383(A)(1), the State was required to prove that Barraza was driving with a suspended license. As a result, Barraza could not have committed aggravated DUI under § 28-1383(A)(1) without also committing the lesser-included offense

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of driving on a suspended license. Therefore, Barraza's conviction for driving on a suspended license violated the Double Jeopardy Clause of the United States and Arizona Constitutions and must be vacated.

¶9 At sentencing, the trial court sentenced Barraza to 1.5 years' imprisonment but did not specify which crime the sentence corresponded with. We presume that a trial judge knows the law and applies it when making their decisions. *State v. Williams*, 220 Ariz. 331, 334 ¶ 9 (App. 2008). Driving on a suspended license is a class 1 misdemeanor, carrying a maximum penalty of up to six months in jail. A.R.S. § 28-3473(B); A.R.S. § 13-707(A). Aggravated DUI is a class 4 felony and a sentence of 1.5 years' imprisonment is within the statutory guidelines. A.R.S. § 28-1383(A)(1) and (O)(1); A.R.S. § 13-702(D). Barraza's sentence of 1.5 years' imprisonment must correspond with the aggravated DUI conviction because such a sentence would exceed the statutory maximum for misdemeanor offenses. Therefore, we find no fundamental error in the trial court's failure to specify which conviction the sentence corresponded with.

¶10 The trial court also awarded Barraza 304 days of presentence incarceration credit, but the record does not indicate how the trial court calculated that number. "Even when a trial record is incomplete, we must assume it supports the judgment unless there is 'at least a credible and unmet allegation of reversible error.'" *State v. Scott*, 187 Ariz. 474, 476 (App. 1996) (quoting *State v. Schackart*, 175 Ariz. 494, 499 (1993)). Because Barraza does not allege that the trial court incorrectly calculated his presentence incarceration credit, we presume the court's calculation is correct.

¶11 We have read and considered counsel's brief and fully reviewed the record for reversible error, *see Leon*, 104 Ariz. at 300, and find none. All the proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure. So far as the record reveals, counsel represented Barraza at all stages of the proceedings, and the sentence imposed was within the statutory guidelines. We decline to order briefing and affirm Barraza's conviction for aggravated DUI and the corresponding 1.5-year sentence but vacate Barraza's conviction for driving on a suspended license.

¶12 Upon the filing of this decision, defense counsel shall inform Barraza of the status of the appeal and of his future options. Counsel has no further obligations unless, upon review, 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). Barraza shall have 30 days

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from the date of this decision to proceed, if he desires, with a pro per motion for reconsideration or petition for review.

**CONCLUSION**

¶13 For the foregoing reasons, we affirm Barraza's conviction and sentence for aggravated DUI but vacate his misdemeanor conviction for driving on a suspended license.



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