

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

TONY GUTIERREZ GUTIERREZ, JR., *Appellant*.

No. 1 CA-CR 20-0139

FILED 2-2-2021

Appeal from the Superior Court in Maricopa County

No. CR2017-002356-001

The Honorable George H. Foster, Judge (Retired)

AFFIRMED

COUNSEL

Arizona Attorney General's Office, Phoenix

By Linley Wilson

Counsel for Appellee

Maricopa County Public Defender's Office, Phoenix

By Cory Engle

Counsel for Appellant

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MEMORANDUM DECISION

Presiding Judge Randall M. Howe delivered the decision of the Court, in which Judge Kent E. Cattani and Judge Cynthia J. Bailey joined.

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 Tony Gutierrez, Jr. has advised this Court that he has found no arguable questions of law and asks us to search the record for fundamental error. Gutierrez was convicted of unlawful flight from a law enforcement officer, a class 5 felony; driving while under the influence, a class 1 misdemeanor; and reckless driving, a class 2 misdemeanor. He was given an opportunity to file a supplemental brief in propria persona; he has not done so. After reviewing the record, we affirm Gutierrez’s convictions and sentences.

FACTS AND PROCEDURAL HISTORY

¶2 We view the facts in the light most favorable to sustaining the judgment and resolve all reasonable inferences against Gutierrez. *See State v. Fontes*, 195 Ariz. 229, 230 ¶ 2 (App. 1998). In November 2016, Gilbert police officers were eating at a restaurant when a member of the public approached and reported that a car was committing traffic violations. One officer left and located the reported car that was driven by Gutierrez. He saw Gutierrez run a red light and then turned on his police lights to initiate a traffic stop but Gutierrez did not stop.

¶3 The pursuit continued from Chandler to downtown Phoenix. The officer saw Gutierrez commit “too many traffic violations to count,” including running numerous red lights. Other officers also joined in the pursuit.

¶4 Gutierrez turned the wrong way down a one-way street and Officer R.B. attempted to use stop sticks—a tire deflation device—to stop the car. Gutierrez saw Officer R.B. standing on the left side of the road and swerved his car toward him, causing Officer R.B. to dive out of the way to avoid being hit. The lead police officers that were following Gutierrez did not see him veer off toward Officer R.B. Police eventually stopped Gutierrez using a pursuit intervention technique, referred to as a pit maneuver, and

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he was arrested. Gutierrez's blood was drawn and testing revealed that he had methamphetamine in his system. Gutierrez was charged with aggravated assault, unlawful flight from a law enforcement officer, driving while under the influence, and reckless driving. The State also alleged that Gutierrez had two historical prior felony convictions.

¶5 After trial, Gutierrez was found guilty of unlawful flight from a law enforcement officer and driving while under the influence but was found not guilty of aggravated assault. The reckless driving offense was tried to the court and the trial court found Gutierrez guilty of that offense. Gutierrez admitted and the trial court found that he had two historical prior felony convictions. Gutierrez was sentence to 2.25 years' imprisonment for unlawful flight from a law enforcement officer, 10-days' jail for driving while under the influence, with 52 days' presentence incarceration credit, and 2 years' probation for reckless driving. Gutierrez timely appealed.

DISCUSSION

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

¶7 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, Gutierrez was represented by counsel at all stages of the proceedings, and the sentences imposed were within the statutory guidelines. We decline to order briefing and affirm Gutierrez's convictions and sentences.

¶8 Upon the filing of this decision, defense counsel shall inform Gutierrez 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). Gutierrez shall have 30 days from the date of this decision to proceed, if he desires, with a pro per motion for reconsideration or petition for review.

CONCLUSION

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¶9

For the foregoing reasons, we affirm.



AMY M. WOOD • Clerk of the Court
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