

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

TAYLOR LABIANCA, *Appellant*.

No. 1 CA-CR 20-0245
FILED 5-11-2021

Appeal from the Superior Court in Maricopa County
No. CR 2017-127381-001
The Honorable Julie A. LaFave, Judge *Pro Tempore*

AFFIRMED

COUNSEL

Arizona Attorney General's Office, Phoenix
By Linley Wilson
Counsel for Appellee

Suzuki Law Offices LLC, Phoenix
By Seth M. Apfel
Counsel for Appellant

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MEMORANDUM DECISION

Judge Michael J. Brown delivered the decision of the Court, in which Presiding Judge David B. Gass and Judge David D. Weinzweig joined.

B R O W N, Judge:

¶1 This appeal is presented to us pursuant to *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297 (1969). Defense counsel has searched the record on appeal and advised us there are no meritorious grounds for reversal. Taylor Labianca was given the opportunity to file a supplemental brief but did not do so. Our obligation is to review the entire record for reversible error, *State v. Clark*, 196 Ariz. 530, 537, ¶ 30 (App. 1999), viewing the evidence in the light most favorable to sustaining the conviction and resolving all reasonable inferences against Labianca, *State v. Guerra*, 161 Ariz. 289, 293 (1989).

¶2 On October 24, 2016, at approximately 2:00 a.m., a police officer observed a car driving in a bike lane. The car overcorrected when returning to the proper lane and then “drifted” into the adjacent lane. The officer turned on his emergency lights but the driver, later identified as Labianca, did not immediately stop. Instead, he continued driving for almost a mile until he pulled into an apartment complex. After exiting the car, Labianca refused the officer’s commands to get back in the car. The officer drew his taser and Labianca complied with the officer’s order to lie on the ground. The officer arrested Labianca, discovered his license was suspended, and noticed signs of alcohol impairment. After Labianca consented to a blood draw, testing revealed he had a blood alcohol concentration of .156 percent.

¶3 The State charged Labianca with two counts of aggravated driving while under the influence (“DUI”), and alleged he had an earlier DUI conviction committed within 84 months of the charged offenses. At trial, a custodian of records for the motor vehicle division testified Labianca’s driver’s license was suspended and Labianca was informed by mail of the suspension. The records custodian also explained that Labianca requested a hearing regarding his license suspension, but he failed to appear and was notified his license was still suspended. Labianca admitted he drank alcohol before driving his car and knew his license had been

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suspended, but testified he did not know he had to pay a reinstatement fee to legally drive again.

¶4 The jury found Labianca guilty as charged and the superior court sentenced him to prison for four months with 123 days presentence incarceration credit. Although Labianca was only entitled to 85 days of credit, we have no authority to correct the miscalculation. *See State v. Dawson*, 164 Ariz. 278, 286 (1990) (“In the absence of a timely appeal or cross-appeal by the state seeking to correct an illegally lenient sentence, an appellate court has no subject matter jurisdiction to consider that issue.”). Labianca timely appealed.

¶5 After a thorough review of the record, we find no reversible error. *Clark*, 196 Ariz. at 541, ¶ 50. The record reflects that Labianca was present and represented by counsel at all critical stages of the proceedings against him. The evidence presented supports the convictions, and the sentences imposed fall within the range permitted by law. As far as the record reveals, these proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure and Labianca’s constitutional and statutory rights. Therefore, we affirm Labianca’s convictions and sentences.

¶6 Unless defense counsel finds an issue that may be appropriately submitted to the Arizona Supreme Court, his obligations are fulfilled once he informs Labianca of the outcome of this appeal and his future options. *See State v. Shattuck*, 140 Ariz. 582, 584–85 (1984). Labianca has 30 days from the date of this decision to proceed, if he wishes, with a pro per motion for reconsideration or petition for review.



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