

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
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IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) No. 1 CA-CR 09-0669
)
Appellee,) DEPARTMENT E
)
v.) **MEMORANDUM DECISION**
)
VINCENT JOSEPH LUSANIA,) (Not for Publication -
) Rule 111, Rules of the
Appellant.) Arizona Supreme Court)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2007-169549-001 DT

The Honorable Lisa Ann Vandenberg, Judge Pro Tem

AFFIRMED

Terry Goddard, Attorney General Phoenix
By Kent E. Cattani, Chief Counsel,
Criminal Appeals/Capital Litigation Section
Attorney for Appellee

Maricopa County Public Defender's Office Phoenix
By Kathryn L. Petroff, Deputy Public Defender
Attorneys for Appellant

G E M M I L L, Judge

¶1 Vincent Joseph Lusania appeals from his convictions and sentences on two counts of aggravated driving or actual physical control of a vehicle while under the influence of intoxicating liquor or drugs, class four felonies. Lusania's

counsel filed a brief in compliance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), stating that she has searched the record and found no arguable question of law and requesting that this court examine the record for reversible error. See *Smith v. Robbins*, 528 U.S. 259 (2000). Lusania was afforded the opportunity to file a supplemental brief *in propria persona* but did not do so. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 "We view the facts and all reasonable inferences therefrom in the light most favorable to sustaining the convictions." *State v. Powers*, 200 Ariz. 123, 124, ¶ 2, 23 P.3d 668, 669 (App. 2001).

¶3 On October 26, 2007, at approximately 12:30 in the morning, Arizona Department of Public Safety ("DPS") Officer A.G. was stopped at a freeway off ramp facing east when he observed a sports utility vehicle ("SUV") travel past him going northbound at a speed exceeding the posted speed limit. The SUV's driver's side window was down and Officer A.G. observed a Hispanic male driving the vehicle. Officer A.G. decided to follow the SUV. He was driving an unmarked Crown Victoria equipped with a siren and lights in the front grill and back window.

¶4 Officer A.G. was following the SUV northbound when the

SUV approached an intersection and turned west, running through a red light. Officer A.G. turned on his car's lights and siren and continued to follow the SUV westbound. As the SUV traveled westbound it reached speeds of 85 to 90 miles per hour. The SUV approached an intersection with a red light and turned north without coming to a complete stop. The SUV eventually pulled into a driveway in front of a house. During the entire pursuit, Office A.G. never lost sight of the SUV.

¶15 Once at the residence, Officer A.G. parked his car behind the SUV and got out. The SUV's two occupants got out of the SUV at the same time Officer A.G. was exiting his car. Officer A.G. approached the driver's side door of the SUV and made contact with Lusania, the occupant who was in the driver's seat. Lusania was walking towards the house when Officer A.G. stopped him. The other occupant of the SUV, Lusania's wife, went inside the house.

¶16 Officer A.G. recognized Lusania as the man he saw driving the SUV when it initially passed him while he was on the freeway off ramp. He asked Lusania why he was driving so fast and Lusania indicated he needed to get his wife home. While speaking with Lusania, Officer A.G. observed that Lusania had bloodshot, watery eyes and had the smell of an alcoholic beverage on this breath. Officer A.G. asked Lusania to do a field sobriety test and Lusania declined. Officer A.G. placed

Lusania under arrest for DUI and Lusania was taken to jail. At approximately 2:02 that same morning, a sample of Lusania's blood was drawn pursuant to a search warrant. The blood sample was tested and it was determined that Lusania's blood alcohol concentration was .178 percent. It was later determined that Lusania was driving on a suspended license.

¶17 On November 3, 2008, Lusania was indicted on two counts of aggravated driving or actual physical control of a vehicle while under the influence of intoxicating liquor or drugs. The first count was for driving while impaired to the slightest degree. The second count was for driving with a blood alcohol concentration of .08 or more. Both counts were aggravated because they occurred while driving on a suspended license. After a jury trial in June 2009, Lusania was found guilty as charged. For each conviction, the court sentenced Lusania to a four-month prison term, with presentence incarceration credit of 64 days, followed by supervised probation for three years, to be served concurrently.

¶18 Lusania timely appealed and we have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1) (2003), 13-4031 (2010), and 13-4033(A) (2010).

DISCUSSION

¶19 Having considered defense counsel's brief and examined the record for reversible error, *see Leon*, 104 Ariz. at 300, 451

P.2d at 881, we find none. The sentence imposed falls within the range permitted by law, and the evidence presented supports the conviction. As far as the record reveals, Lusania was represented by counsel at all stages of the proceedings, and these proceedings were conducted in compliance with his constitutional and statutory rights and the Arizona Rules of Criminal Procedure.

¶10 Pursuant to *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984), counsel's obligations in this appeal have ended. Counsel need do no more than inform Lusania of the disposition of the appeal and his future options, unless counsel's review reveals an issue appropriate for submission to the Arizona Supreme Court by petition for review. Lusania has thirty days from the date of this decision in which to proceed, if he desires, with a *pro se* motion for reconsideration or petition for review.

CONCLUSION

¶11 Lusania's convictions and sentences are affirmed.

_____/s/_____
JOHN C. GEMMILL, Judge

CONCURRING:

_____/s/_____
SHELDON H. WESIBERG, Presiding Judge

_____/s/_____
PHILIP HALL, Judge