

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

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



DIVISION ONE
FILED: 08/17/2010
RUTH WILLINGHAM,
ACTING CLERK
BY: GH

STATE OF ARIZONA,) 1 CA-CR 09-0834
)
Appellee,) DEPARTMENT D
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
GLEN MATTHEW LIPP,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
_____)

Appeal from the Superior Court of Maricopa County

Cause No. CR2008-146526-001 DT

The Honorable Carolyn K. Passamonte, Judge Pro Tem

AFFIRMED

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

James J. Haas, Maricopa County Public Defender Phoenix
By Peg Green, Deputy Public Defender
Attorneys for Appellant

T H O M P S O N, Judge

¶1 This case comes to us as an appeal under *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969). Counsel for Glen Matthew Lipp

(defendant) has advised us that, after searching the entire record, she has been unable to discover any arguable questions of law and has filed a brief requesting this court to conduct an *Anders* review of the record. Defendant has been afforded an opportunity to file a supplemental brief *in propria persona*, and he has not done so. For the following reasons, we affirm.

FACTUAL AND PROCEDURAL HISTORY

¶2 Defendant was charged by indictment with four counts of aggravated driving or actual physical control while under the influence of intoxicating liquor or drugs, all class 4 felonies.¹ The following evidence was presented at trial.²

¶3 On December 24, 2007, Phoenix Police Officers Neals and Talley pulled over a vehicle after it made a turn without

¹ Specifically, defendant was charged with driving on a suspended license under the influence of intoxicating liquor, driving on a suspended license with an alcohol concentration over .08, driving under the influence of intoxicating liquor while having previous DUI convictions in the 84 months preceding this incident, and driving with an alcohol concentration over .08 while having previous DUI convictions in the 84 months preceding this incident. See Arizona Revised Statutes (A.R.S.) §§ 28-1381(A)(1)(2007), 1381(A)(2)(2007), 1383(A)(1)(2007), and 1383(A)(2)(2007).

² Our obligation in this appeal is to review "the entire record for reversible error." *State v. Clark*, 196 Ariz. 530, 537, ¶ 30, 2 P.3d 89, 96 (App. 1999). We view the facts in the light most favorable to sustaining the jury's verdict and resolve all inferences against defendant. See *State v. Guerra*, 161 Ariz. 289, 293, 778 P.2d 1185, 1189 (1989) (citation omitted).

signaling. Once the vehicle stopped, Officer Neals noticed the odor of alcohol coming from defendant, who was driving the vehicle. Defendant told Officer Neals that he had been drinking earlier. Officer Neals arrested defendant and transported him to a DUI van where he was read his *Miranda* rights by Officer Leister. In the DUI van, defendant refused to take a breathalyzer test. Defendant was then taken to the police department where, after obtaining a search warrant, Officer Smith, a trained phlebotomist, took a sample of defendant's blood for testing. Defendant's blood was drawn at 4:42 a.m. and defendant was stopped by police at 1:20 a.m. Defendant's blood alcohol content was determined to be .175.

¶14 A records analyst from the Arizona Motor Vehicle Department, Jack Owens, testified that as of December 24, 2007, defendant's license was suspended and revoked. Additionally, Mr. Owens testified that the records indicated defendant was given adequate notice that his license was suspended and revoked. Mr. Owens also testified to certified court records from the Superior Court of California which confirmed that defendant had two prior DUI convictions within the 84 months preceding December 24, 2007.

¶15 A jury convicted defendant as charged. Defendant was sentenced to four months imprisonment with respect to each of

the four counts, all sentences to run concurrently, and four years probation upon release from prison. Additionally, the court credited defendant with 48 days of presentence incarceration. Defendant timely appealed his convictions and sentences. We have jurisdiction pursuant to Article 6, Section 9 of the Arizona Constitution and A.R.S. §§ 12-120.21(A)(1), 13-4031 and -4033(A)(1) (2010).

DISCUSSION

¶16 We have read and considered counsel's brief and have searched the entire record for reversible error. See *Leon*, 104 Ariz. at 300, 451 P.2d at 881. We find none. All of the proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure. So far as the record reveals, defendant was adequately represented by counsel at all stages of the proceedings, and the sentence imposed was within the statutory limits. Pursuant to *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984), defendant's counsel's obligations in this appeal are at an end. Defendant 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

¶7 We affirm the convictions and sentences.

/s/

JON W. THOMPSON, Judge

CONCURRING:

/s/

MICHAEL J. BROWN, Presiding Judge

/s/

SHELDON H. WEISBERG, Judge