

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. 31.34



DIVISION ONE
FILED: 07-13-2010
PHILIP G. URRY, CLERK
BY: GH

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) No. 1 CA-CR 09-0871
)
Appellee,) DEPARTMENT S
)
v.) **MEMORANDUM DECISION**
)
DENNIS KENT WEBSTER,) (Not for Publication -
) Rule 111, Rules of the
Appellant.) Arizona Supreme Court)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR 2008-164651-001 DT

The Honorable Carolyn K. Passamonte, Judge *Pro Tempore*

AFFIRMED AS MODIFIED

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

James J. Haas, Maricopa County Public Defender Phoenix
By Stephen R. Collins, Deputy Public Defender
Attorneys for Appellant

T I M M E R, Chief Judge

¶1 Dennis Kent Webster appeals his convictions and sentences for one count of aggravated driving or actual physical control of a vehicle while under the influence of intoxicating

liquor or drugs and one count of aggravated driving a vehicle with an alcohol concentration of 0.08.¹ Webster argues the sentencing minute entry incorrectly states he received three years' probation for Count Two because the trial court actually imposed a concurrent term of two years' probation at the sentencing hearing. The State confesses error, and for the reasons that follow, we agree.

¶2 On January 7, 2009, the State filed an indictment, charging Webster with one count of aggravated driving or actual physical control of a vehicle while under the influence of intoxicating liquor or drugs and one count of aggravated driving a vehicle with an alcohol concentration of 0.08, both class four felonies. A jury convicted Webster on both counts. Subsequently, the court imposed four-month concurrent prison terms as to both counts and placed Webster on concurrent two-year terms of supervised probation upon his release. The sentencing minute entry, however, states Webster received concurrent probation terms of two and three years for Count One and Count Two, respectively.

¹ The sentencing minute entry and the sentencing hearing transcript reflect that Webster is guilty of two counts of aggravated driving while under the influence. However, the indictment, verdicts, trial minute entry, the sentencing statutes cited in the sentencing minute entry, and the parties' briefs indicate it is one count of aggravated driving while under the influence and one count of aggravated driving a vehicle with an alcohol concentration of 0.08.

¶13 "Where there is a discrepancy between the oral sentence and the written judgment, the oral pronouncement of sentence controls." *State v. Zinsmeyer*, 222 Ariz. 612, 622, ¶ 23, 218 P.3d 1069, 1079 (App. 2009) (citations omitted). Further, because "we are able to ascertain the trial court's intention by reference to the record, remand for clarification is unnecessary." *State v. Contreras*, 180 Ariz. 450, 453 n.2, 885 P.2d 138, 141 (App. 1994).

¶14 We therefore correct the sentencing minute entry to reflect a concurrent term of two years' probation for Count Two.

/s/
Ann A. Scott Timmer, Chief Judge

CONCURRING:

/s/
Diane M. Johnsen, Judge

/s/
Donn Kessler, Judge