

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: 11-16-2010
RUTH WILLINGHAM,
ACTING CLERK
BY: GH

STATE OF ARIZONA,) 1 CA-CR 10-0035
)
Appellee,) DEPARTMENT C
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
JEREMY OWEN WHITTLE,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
)
_____)

Appeal from the Superior Court in Mohave County

Cause No. CR2008-1403

The Honorable Rick A. Williams, Judge

AFFIRMED

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

Jill L. Evans, Mohave County Appellate Defender Kingman
Attorney for Appellant

O R O Z C O, Judge

¶1 Jeremy Owen Whittle (Defendant) appeals his
convictions and sentences imposed for two counts of aggravated
driving while under the influence (DUI). The convictions are

class four felonies in violation of Arizona Revised Statutes (A.R.S.) sections 28-1383.A.1. (Supp. 2010) and -1381 (Supp. 2010).¹

¶2 Defendant's counsel has filed this appeal in accordance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969). After searching the entire record on appeal, Defendant's counsel found no arguable question of law that is not frivolous and requests that we review the record for fundamental error. See *State v. Clark*, 196 Ariz. 530, 537, ¶ 30, 2 P.3d 89, 96 (App. 1999) (stating that this court "reviews the entire record for reversible error"). Although this court granted Defendant the opportunity to file a supplemental brief in propria persona, he has not done so.

¶3 We have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution, and A.R.S. §§ 12-120.21.A.1. (2003), 13-4031 (2010), and -4033.A. (2010). Finding no reversible error, we affirm.

FACTS AND PROCEDURAL HISTORY

¶4 When reviewing the record, "we view the evidence in the light most favorable to supporting the verdict." *State v. Torres-Soto*, 187 Ariz. 144, 145, 927 P.2d 804, 805 (App. 1996).

¹ We cite the current versions of applicable statutes because no revisions material to this decision have since occurred.

¶15 At trial, Kingman police officer D.C. (Officer C.) testified he stopped Defendant for driving a motorcycle without a license plate. While talking with Defendant, Officer C. smelled alcohol and noticed Defendant's eyes were red and watery. Defendant admitted to Officer C. that he had been drinking and his driver's license was suspended. Defendant was given a horizontal gaze nystagmus exam, and Officer C. found six cues from the exam that would indicate Defendant was impaired.

¶16 Officer C. decided the area was not appropriate for further field sobriety tests. Defendant was placed under arrest and transported to a DUI "command post." At the command post, Defendant refused to submit to field sobriety testing or Intoxilyzer Instrument testing (breath test). Consequently, Officer C. obtained a search warrant for a sample of Defendant's blood.

¶17 E.R., a forensic scientist at the Arizona Department of Public Safety Crime Lab, tested Defendant's blood sample and testified his resulting blood alcohol level at the time of his arrest was 0.148 percent. D.R., the phlebotomist who drew Defendant's blood sample, Officer C., and E.R. all testified that standard operating procedures were followed in obtaining, handling, and testing of Defendant's blood sample.

¶18 The jury convicted Defendant of aggravated driving while under the influence of intoxicating liquor and aggravated

driving with a blood alcohol content of 0.08 percent or more. Defendant was charged with Aggravated DUI, because he was driving with a suspended license at the time of arrest. A.R.S. § 28-1383.A.1.

DISCUSSION

¶9 We have carefully searched the entire record for reversible error and found none. *Clark*, 196 Ariz. at 541, ¶ 49, 2 P.3d at 100. Defendant was present and represented by counsel at all critical stages of the proceedings, and he was given an opportunity to speak at sentencing. Defendant requested to forgo probation and the court imposed a legally appropriate sentence. The court also granted credit for one day of presentence incarceration. The proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure and substantial evidence supported the jury's findings of guilt.

CONCLUSION

¶10 For the foregoing reasons, Defendant's convictions and sentences are affirmed.

¶11 Counsel's obligations pertaining to Defendant's representation in this appeal have ended. Counsel need do nothing more than inform Defendant of the status 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. *State v. Shattuck*, 140 Ariz. 582, 584-85,

684 P.2d 154, 156-57 (1984). Defendant has thirty days from the date of this decision to proceed, if he so desires, with an in propria persona motion for reconsideration or petition for review.²

/S/

PATRICIA A. OROZCO, Judge

CONCURRING:

/S/

MAURICE PORTLEY, Presiding Judge

/S/

MARGARET H. DOWNIE, Judge

² Pursuant to Rule 31.18.b, Defendant or his counsel have fifteen days to file a motion for reconsideration. On the Court's own motion, we extend the time to file such a motion to thirty days from the date of this decision.