

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: 11/18/10
RUTH WILLINGHAM,
ACTING CLERK
BY: DLL

STATE OF ARIZONA,) 1 CA-CR 10-0041
)
Appellee,) DEPARTMENT C
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
) Rule 111, Rules of the
CRAIG NELSON MCKINNEY,) Arizona Supreme Court)
)
Appellant.)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2008-165764-001 DT

The Honorable Carolyn K. Passamonte, Judge Pro Tempore

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 Christopher V. Johns, Deputy Public Defender
Attorneys for Appellant

P O R T L E Y, Judge

¶1 This is 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 Defendant Craig Nelson McKinney has advised us that, after searching the entire record, he has been unable to discover any arguable questions of law, and has filed a brief requesting us to conduct an *Anders* review of the record. Defendant was given an opportunity to file a supplemental brief, and has not filed one.

FACTS¹

¶2 Defendant was stopped by Phoenix Police at approximately 12:30 a.m. on October 4, 2007, because the lights on the car he was driving were not illuminated. He stopped his car in the middle of the road. He only had an Arizona Identification Card because his license had been cancelled, and he admitted to having consumed "two beers." Defendant was arrested after the investigating officer conducted the Horizontal Gaze Nystagmus test and determined Defendant showed signs of impairment, and Defendant was unable to complete the field sobriety tests. Subsequent breathalyzer tests revealed Defendant's blood alcohol content ("BAC") to be .363 and .361.

¶3 Defendant was charged with aggravated DUI and aggravated DUI with a BAC over 0.08, class four felonies. He pled not guilty and was tried. The jury convicted him as charged. He was sentenced to four months in prison, with

¹ We review the facts in the light most favorable to sustaining the verdict. See *State v. Guerra*, 161 Ariz. 289, 293, 778 P.2d 1185, 1189 (1989).

thirty-three days presentence incarceration credit, followed by a four-year term of probation.

¶4 We have jurisdiction over this appeal pursuant to Article 6, Section 9, of the Arizona Constitution, and Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1) (2003), 13-4031, and -4033(A)(1) (2010).

DISCUSSION

¶5 We have read and considered counsel's brief, and have searched the entire record for reversible error. We find none. See *Leon*, 104 Ariz. at 300, 451 P.2d at 881. All of the proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure. The record, as presented, reveals that Defendant was represented by counsel at all stages of the proceedings, and the sentence imposed was within the statutory limits.

CONCLUSION

¶6 After this decision has been filed, counsel's obligation to represent Defendant in this appeal has ended. Counsel need do no more than inform Defendant of the status of the appeal and Defendant's future options, unless counsel's review reveals an issue appropriate for submission to the Arizona Supreme Court by petition for review. See *State v. Shattuck*, 140 Ariz. 582, 585, 684 P.2d 154, 157 (1984). Defendant can, if desired, file a motion for reconsideration or

petition for review pursuant to the Arizona Rules of Criminal Procedure.

¶7 Accordingly, we affirm Defendant's convictions and sentences.

/s/

MAURICE PORTLEY, Presiding Judge

CONCURRING:

/s/

MARGARET H. DOWNIE, Judge

/s/

PATRICIA A. OROZCO, Judge