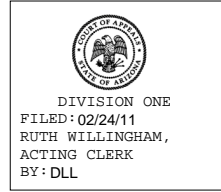


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz.R.Sup.Ct. 111(c); ARCAP 28(c);
Ariz.R.Crim.P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



STATE OF ARIZONA,) 1 CA-CR 10-0233
)
Appellee,) DEPARTMENT E
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
ANDY RANDY SIMONSON,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2009-108549-001 SE

The Honorable Pamela D. Svoboda, Commissioner

AFFIRMED AS MODIFIED

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

Maricopa County Public Defender Phoenix
By Terry J. Reid, Deputy Public Defender
Attorneys for Appellant

I R V I N E, Judge

¶1 This appeal is timely filed in accordance with *Anders v. California*, 386 U.S. 738 (1967) and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969). Counsel for Andy Randy Simonson asks

this Court to search the record for fundamental error. Simonson was given an opportunity to file a supplemental brief in propria persona. He has not done so. After reviewing the record, we affirm his convictions and sentences as modified for two aggravated DUIs, class 4 felonies.

FACTS AND PROCEDURAL HISTORY

¶2 We view the facts in the light most favorable to sustaining the trial court's judgment and resolve all reasonable inferences against Simonson. *State v. Fontes*, 195 Ariz. 229, 230, ¶ 2, 986 P.2d 897, 898 (App. 1998). At about 1:30 a.m. in February 2009, a police officer stopped Simonson for driving against approaching traffic on a major street in Tempe. Simonson showed signs of alcohol impairment and admitted he had been drinking. He failed a breathalyzer test and could not follow directions for a field sobriety test. He was arrested, and tests taken at the police station revealed Simonson's blood alcohol concentration exceeded 0.2 within two hours of driving. He told an officer that he knew his license had been revoked, and Motor Vehicle Department records later confirmed multiple suspensions and revocations.

¶3 The State charged Simonson with two aggravated DUIs based on impaired ability to drive and alcohol level, both class four felonies. Ariz. Rev. Stat. § 28-1381(A)(1) and (2) (Supp. 2010). At the close of evidence, the trial court properly

instructed the jury on the elements of the offense. Simonson was convicted as charged.

¶4 The trial court conducted the sentencing hearing in compliance with Simonson's constitutional rights and Arizona Rule of Criminal Procedure 26. The trial court found that the State proved beyond a reasonable doubt two prior felony convictions for aggravated DUIs. It sentenced Simonson to concurrent, presumptive prison terms of ten years, with eighty days of presentence incarceration credit.

DISCUSSION

¶5 We review Simonson's convictions and sentences for fundamental error. See *State v. Gendron*, 168 Ariz. 153, 155, 812 P.2d 626, 628 (1991). Counsel for Simonson has advised this court that after a diligent search of the entire record, she has found no arguable question of law. The court has read and considered counsel's brief and fully reviewed the 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, Simonson was represented by counsel at all stages of the proceedings, and the sentence imposed was within the statutory limits. We decline to order briefing, and we affirm Simonson's convictions and sentences. Because Simonson is entitled to nine additional days for the time between his

arrest and release on bond, we modify the sentence to reflect a total of eighty-nine days of presentence incarceration credit. [ROA 4] See *State v. Stevens*, 173 Ariz. 494, 496, 844 P.2d 661, 663 (App. 1992).

¶6 Upon the filing of this decision, defense counsel shall inform Simonson of the status of his appeal and of his future options. Defense counsel has no further obligations unless, upon review, counsel finds an issue appropriate for submission to the Arizona Supreme Court by petition for review. See *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984). Simonson shall have thirty days from the date of this decision to proceed, if he desires, with a pro per motion for reconsideration or petition for review. On the Court's own motion, we extend the time for Simonson to file a pro per motion for reconsideration to thirty days from the date of this decision.

CONCLUSION

¶7 We affirm the convictions and sentences as modified.

/s/

PATRICK IRVINE, Judge

CONCURRING:

/s/

PETER B. SWANN, Presiding Judge

/s/

MAURICE PORTLEY, Judge