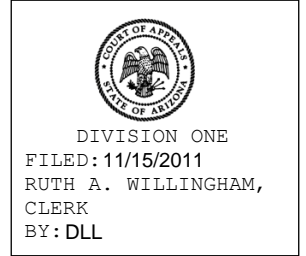


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



STATE OF ARIZONA,) 1 CA-CR 10-0600
)
Appellee,) DEPARTMENT A
)
v.) **MEMORANDUM DECISION**
)
JOHN JOK ACUOTH,)
) (Not for Publication -
) Rule 111, Rules of the
) Arizona Supreme Court)
)
)
)
)
)
)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2009-171909-001 DT

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

AFFIRMED

Thomas C. Horne, Arizona Attorney General Phoenix
by Kent E. Cattani, Chief Counsel,
Criminal Appeals/Capital Litigation Section
Attorneys for Appellee

Theresa M. Armendarez, P.L.C. Manteo, NC
by Theresa M. Armendarez
Attorney for Appellant

B A R K E R, Judge

¶1 John Jok Acuoth appeals from his convictions and sentences for six counts of aggravated DUI, all class four felonies. Acuoth's counsel filed a brief in accordance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), advising this court that after searching the entire record on appeal, he finds no arguable ground for reversal. Acuoth was granted leave to file a supplemental brief *in propria persona*, but did not do so.

¶2 We have jurisdiction 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 (2010), and 12-4033(A) (2010). We are required to search the record for reversible error. Finding no such error, we affirm.

Facts and Procedural Background¹

¶3 At about 10:45 on the evening of November 13, 2009, officers observed Acuoth driving with only one functioning headlight. The officers followed Acuoth in order to conduct a traffic stop. They observed as he approached a red light with his right turn signal on, turned right at the light without stopping, and turned into the middle lane. The officers pulled Acuoth over.

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

¶4 While talking with Acuoth, the officers noticed his bloodshot, watery eyes and the odor of alcohol emanating from the car. When they asked him if he had been drinking, he said no. The officers called a DUI officer to the scene. The DUI officer performed an HGN test on Acuoth; he exhibited all six cues. The officer also noted Acuoth's bloodshot, watery eyes. Acuoth was arrested and taken to a DUI processing van where his blood was drawn at about 11:40 pm.

¶5 After being placed under arrest, the officer advised Acuoth of his *Miranda* rights. Acuoth told the officer that he had been operating the vehicle, but he continued to deny that he had been drinking. However, Acuoth's blood alcohol content was found to be 0.145. Acuoth also admitted to the officer that he had been convicted of a DUI on two occasions, in 2007 and in 2008, and that his license was both suspended and revoked as a result of those convictions. Acuoth was also required to have an ignition interlock device installed on any vehicle he would operate after reinstating his license.

¶6 Acuoth was charged with six counts of aggravated DUI arising out of this incident.² At trial, the State introduced

² Specifically: count 1, driving while under the influence while his license was revoked or suspended; count 2, driving with an alcohol concentration of 0.08 or more while his license was revoked or suspended; count 3, driving under the influence while under a court order to equip the vehicle with a certified ignition interlock device; count 4, driving with an alcohol

evidence that Acuoth's blood test returned a blood alcohol content of 0.145. The State showed that Acuoth's driver's license had been revoked and suspended as of November 13, 2009, that he had received notice of the revocation, that he was required to have an ignition interlock device installed, and that he had two DUI convictions within seven years of the charged offense. While testifying, Acuoth admitted that he had two prior DUI convictions and that he had been drinking on November 13. After a four-day trial, Acuoth was convicted on all six counts by an eight-person jury. As to each count, the court placed Acuoth on two years of supervised probation following completion of four months in the Department of Corrections, to run concurrently on each count. Acuoth timely appealed.

Disposition

¶7 We have reviewed the record and have found no meritorious grounds for reversal of Acuoth's convictions or for modification of the sentences imposed. See *Anders*, 386 U.S. at 744; *Leon*, 104 Ariz. at 300, 451 P.2d at 881. Acuoth was

concentration of 0.08 or more while under a court order to equip the vehicle with a certified ignition interlock device; count 5, driving under the influence and having been previously convicted of two prior DUIs within 84 months of the current offense; and count 6, driving with an alcohol concentration of 0.08 or more and having been previously convicted of two prior DUIs within 84 months of the current offense.

present, or his presence was waived, at all critical stages of the proceedings and was represented by counsel. All proceedings were conducted in accordance with the Arizona Rules of Criminal Procedure. Accordingly, we affirm.

¶18 After the filing of this decision, counsel's obligations in this appeal have ended subject to the following. Counsel need do no more than inform Acuoth 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). Acuoth has thirty days from the date of this decision to proceed, if he desires, with a proper motion for reconsideration or petition for review.

/s/

DANIEL A. BARKER, Judge

CONCURRING:

/s/

ANN A. SCOTT TIMMER, Presiding Judge

/s/

PATRICK IRVINE, Judge