

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



DIVISION ONE
FILED: 11/01/2011
RUTH A. WILLINGHAM,
CLERK
BY: GH

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) No. 1 CA-CR 11-0274
) 1 CA-CR 11-0275
Appellee,) (Consolidated)
)
) DEPARTMENT A
v.)
) **MEMORANDUM DECISION**
LESTER MICHAEL TUNNEY,) (Not for Publication-
) Rule 111, Rules of the
Appellant.) Arizona Supreme Court)
_____)

Appeal from the Superior Court in Coconino County

Cause No. S0300-CR2010-00631
S0300-CR2010-00897

The Honorable Jacqueline Hatch, Judge

AFFIRMED

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

Coconino County Public Defender Flagstaff
By H. Allen Gerhardt, Coconino Public Defender
Attorney for Appellant

T H O M P S O N, Judge

¶1 This case comes to us as 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 Lester Michael Tunney (defendant) 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 this court conduct an *Anders* review of the record. Defendant has been afforded an opportunity to file a supplemental brief *in propria persona*, and he has not done so.

¶12 Defendant pled guilty to two charges of aggravated DUI. The trial court found defendant had three historical priors in an aggravation/mitigation hearing. Defendant was sentenced to concurrent 10 year sentences in prison for each aggravated DUI charge in accordance with the enhancement provisions of Arizona Revised Statute (A.R.S.) section 13-703(C) (2010), and he received 233 days of presentence incarceration credit. Defendant made a motion to modify the sentence under Arizona Rule of Criminal Procedure 24.3, claiming the court should have found only one historical prior. With one historical prior, defendant's sentence would be subject to enhancement by A.R.S § 13-703(B)(2) not § 13-703(C). The trial court denied the motion. Defendant timely appealed.

¶13 We have read and considered counsel's brief and have searched the entire 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, and the sentence imposed was within the statutory limits. Pursuant to *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984), defendant's counsel's obligations in this appeal are at an end.

¶14 We affirm the sentences.

/s/
JON W. THOMPSON, Judge

CONCURRING:

/s/
DIANE M. JOHNSEN, Presiding Judge

/s/
MARGARET H. DOWNIE, Judge