

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

SEAN PATRICK KELLEY,
Appellant.

No. 2 CA-CR 2014-0366
Filed April 13, 2015

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION

See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.24.

Appeal from the Superior Court in Pima County
No. CR20134714001
The Honorable Kenneth Lee, Judge

AFFIRMED

COUNSEL

Lori J. Lefferts, Pima County Public Defender
By Lisa M. Hise, Assistant Public Defender, and
David J. Euchner, Assistant Public Defender, Tucson
Counsel for Appellant

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MEMORANDUM DECISION

Presiding Judge Kelly authored the decision of the Court, in which Judge Howard and Judge Vásquez concurred.

K E L L Y, Presiding Judge:

¶1 After a jury trial, Sean Kelley was convicted of resisting arrest and aggravated driving under the influence of an intoxicant (DUI), specifically: DUI with a suspended or revoked license and driving with an alcohol concentration (BAC) at or above .08 with a suspended or revoked license, DUI having two or more prior DUI violations in the preceding eighty-four months, and driving with a BAC of .08 or greater having two or more DUI violations in the previous eighty-four months. The trial court sentenced Kelley to concurrent prison terms, the longest of which were ten years.

¶2 Counsel has filed a brief in compliance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999), asserting she has reviewed the record but found no arguable issue to raise on appeal. Consistent with *Clark*, 196 Ariz. 530, ¶ 32, 2 P.3d at 97, she has provided “a detailed factual and procedural history of the case with citations to the record” and asks this court to search the record for error. Kelley has not filed a supplemental brief.

¶3 Viewing the evidence in the light most favorable to sustaining the verdicts, *see State v. Tamplin*, 195 Ariz. 246, ¶ 2, 986 P.2d 914, 914 (App. 1999), sufficient evidence supports the jury’s verdicts here. During a traffic stop, when a police officer asked for his driver’s license, Kelley attempted to flee and was arrested after a brief scuffle during which he tried to grab an officer’s Taser. A.R.S. § 13-2508(A). Kelley’s driver’s license had been suspended and he had been served with notice of that suspension, he showed several signs of intoxication, breath testing showed his BAC to be .123 and

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.135 approximately one hour after the traffic stop, and the parties stipulated that he had two previous DUI convictions within the previous eighty-four months. *See* A.R.S. §§ 28-1381(A)(1), (2); 28-1383(A)(1), (2). And the evidence supports the trial court's finding that Kelley had two previous felony convictions.

¶4 The prison terms imposed for Kelley's DUI convictions are within the statutory limit and were imposed properly. *See* A.R.S. §§ 13-703(C), (J); 28-1383(L)(1). In light of Kelley's criminal history, however, the prison term imposed for resisting arrest appears to be less than the statutory minimum. *See* §§ 13-703(C), (J); 13-2508(C). But the state did not file a cross-appeal and, accordingly, we lack jurisdiction to address that issue. *State v. Dawson*, 164 Ariz. 278, 286, 792 P.2d 741, 749 (1990).

¶5 Pursuant to our obligation under *Anders*, we have searched the record for fundamental error and found none. *See State v. Fuller*, 143 Ariz. 571, 575, 694 P.2d 1185, 1189 (1985) (*Anders* requires court to search record for fundamental error). Accordingly, we affirm Kelley's convictions and sentences.