

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

JESSE VALLES CATALAN,
Appellant.

No. 2 CA-CR 2014-0433
Filed June 25, 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NOT FOR PUBLICATION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. CR20140051001

The Honorable Deborah Bernini, Judge

AFFIRMED

COUNSEL

Isabel G. Garcia, Pima County Legal Defender
By Stephan J. McCaffery, Assistant Legal Defender, Tucson
Counsel for Appellant

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MEMORANDUM DECISION

Judge Espinosa authored the decision of the Court, in which Chief Judge Eckerstrom and Presiding Judge Miller concurred.

ESPINOSA, Judge:

¶1 After a jury trial, appellant Jesse Catalan was convicted of four counts of aggravated driving under the influence of an intoxicant (DUI), based on allegations that he had been driving while impaired to the slightest degree, with an alcohol concentration of at least .08, while his license was suspended or revoked, and had been convicted of two or more DUI violations committed in the preceding eighty-four months. The jury found Catalan had been on probation when he committed these offenses, and the trial court found he had two historical prior felony convictions and sentenced him to enhanced, presumptive, concurrent, ten-year terms of imprisonment.

¶2 Counsel has filed a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), and *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999), avowing he has reviewed the record and found no meritorious issue to argue on appeal. Consistent with *Clark*, he has provided “a detailed factual and procedural history of the case with citations to the record,” 196 Ariz. 530, ¶ 32, 2 P.3d at 97, and he asks this court to search the record for error. Catalan was provided additional time to file a supplemental brief, which he did not do.

¶3 We conclude substantial evidence supported the jury’s verdicts. See A.R.S. §§ 28-1381(A)(1), (2), 28-1383(A)(1), (2). In sum, on December 25, 2013, a lieutenant in the Tucson Police Department was stopped at a red light when Catalan, driving at thirty-five to forty miles per hour, bypassed stopped vehicles by using the left-turn lane, proceeded through the red light and crossed the intersection, returning to a lane for continuing traffic. The lieutenant

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initiated a traffic stop and, when he asked to see Catalan's driver license, Catalan gave him an Arizona State Identification Card instead. The lieutenant observed signs that Catalan was impaired, including the odor of intoxicants coming from his person, bloodshot, watery eyes, slurred speech, flushed face, and "forward and backwards sway" when standing. After first attempting field sobriety tests, Catalan told an assisting police officer he could not complete the walk-and-turn and one-leg-stand tests; another officer tested Catalan for HGN¹ and observed six of six cues for intoxication. Catalan was arrested and breath tests administered within two hours of his traffic violation, using a properly working Intoxilyzer 8000, indicated blood alcohol content of .242 and .247. Evidence also established Catalan's privilege to drive was suspended and revoked on the date of his arrest and he previously had been convicted of DUI offenses committed in March and May 2008.

¶4 After the jury returned guilty verdicts on the DUI charges, it found, beyond a reasonable doubt, that Catalan had been on felony probation on the date of the offense, based on testimony provided by his probation officer, and the trial court found Catalan's convictions for the 2008 aggravated DUI offenses were historical prior felony convictions for sentence enhancement purposes. We conclude the sentences imposed were authorized by statute and in a lawful manner. See A.R.S. §§ 13-105(22)(a)(iv), 13-703(J), 13-708(C).

¶5 In our examination of the record pursuant to *Anders*, we have found no fundamental or reversible error and no arguable issue warranting further appellate review. See *Anders*, 386 U.S. at 744. Accordingly, Catalan's convictions and sentences are affirmed.

¹Horizontal Gaze Nystagmus.