IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

LUIS ALBERTO MEJIA,
Appellant.

No. 2 CA-CR 2019-0228
Filed August 20, 2020

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NOT FOR PUBLICATION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. 31.19(e).

Appeal from the Superior Court in Pinal County
No. S1100CR201600854
The Honorable Patrick K. Gard, Judge

AFFIRMED AS CORECTED IN PART; VACATED IN PART

COUNSEL

Michael Villarreal, Florence
Counsel for Appellant

MEMORANDUM DECISION

Chief Judge Vásquez authored the decision of the Court, in which Presiding Judge Staring and Judge Brearcliffe concurred.

V Á S Q U E Z, Chief Judge:

¶1 After a jury trial, Luis Mejia was convicted of two counts of aggravated driving under the influence of an intoxicant (DUI), specifically, DUI while his license to drive was suspended and DUI with a blood alcohol concentration (BAC) of 0.08 or more while his license was suspended. The trial court sentenced Mejia to enhanced, concurrent, presumptive, ten-year prison terms. As part of the sentencing, the court ordered Mejia to pay a fine, a DUI abatement fund payment, and various assessments/fees, including a time payment fee, and then reduced all of those sums to a criminal restitution order (CRO).

¶2 Counsel has filed a brief in compliance with *Anders v. California*, 386 U.S. 738 (1967), *State v. Leon*, 104 Ariz. 297 (1969), and *State v. Clark*, 196 Ariz. 530 (App. 1999), stating he has reviewed the record but found "no arguable issues on appeal," and asks this court to review the record for fundamental or reversible error.[1] Mejia has filed two supplemental briefs in which he challenges the validity of one of the trial exhibits and his sentence.

¶3 Viewed in the light most favorable to sustaining the jury's verdicts, *see State v. Tamplin*, 195 Ariz. 246, ¶ 2 (App. 1999), the evidence is sufficient to support the jury's findings of guilt, *see* A.R.S. §§ 28-1381(A)(1), (A)(2), 28-1383(A)(1), (O)(1). The evidence presented at trial showed that in March 2016, a deputy conducted a traffic stop of the vehicle Mejia was driving. Upon stopping Mejia, the deputy noticed an open bottle of cold beer in the cup holder in addition to beer cans "strewn throughout" the

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[1] After counsel filed a brief pursuant to *Anders*, avowing he had "thoroughly reviewed the [r]ecord on [a]ppeal," we noted the record did not contain the exhibits from the prior convictions portion of the sentencing hearing. We ordered those exhibits be filed with the court under supplemental certificate.

vehicle, and observed that Mejia was argumentative and exhibited multiple signs of intoxication. Testing of Mejia's blood showed his BAC to be between 0.212 and 0.222 within two hours of driving. Evidence was presented that on December 12, 2012, the Arizona Department of Transportation had mailed a notification to Mejia at his most recent address on file informing him that his driver license was suspended, a suspension that was "still open and ongoing" in March 2016. And, the trial court properly sentenced Mejia as a category three repetitive offender, and the sentences imposed are within the statutory range for that category of repetitive offender. *See* A.R.S. §§ 13-105(22)(d), (e), 13-703(C), (J).

¶4 In our review of the record pursuant to *Anders*, we discovered that, although the trial court found Mejia to be a category three repetitive offender, the written judgment characterizes his offenses as "non-repetitive." We thus correct the sentencing order to reflect that both counts are repetitive, as reflected in the sentencing transcript as well as in the sentences imposed. *See State v. Ovante*, 231 Ariz. 180, ¶ 38 (2013) (discrepancy between oral pronouncement of sentence and written minute entry generally controlled by oral pronouncement and reviewing court will correct minute entry if record clearly identifies intended sentence). In addition, as previously noted, the court ordered payments reduced to a CRO. But a "CRO is unauthorized except to the extent it pertains to restitution." *State v. Veloz*, 236 Ariz. 532, ¶ 20 (App. 2015); *see also* A.R.S. § 13-805. Because no restitution was imposed, we vacate the CRO.

¶5 Pursuant to our obligation under *Anders*, we have considered Mejia's supplemental briefs and searched the record for fundamental, reversible error and have found one such error regarding the CRO, as previously noted. We vacate the CRO, but otherwise affirm Mejia's convictions and sentences as corrected.