IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

THE STATE OF ARIZONA,
Appellant,

v.

JOEL ALDAY,
Appellee.

No. 2 CA-CR 2021-0074
Filed June 3, 2022

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NOT FOR PUBLICATION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 Pima County
No. CR20184835001
The Honorable Brenden J. Griffin, Judge

AFFIRMED

COUNSEL

Laura Conover, Pima County Attorney
By Maile Belongie, Deputy County Attorney, Tucson
Counsel for Appellant

William J. Parven, Tucson
Counsel for Appellee

MEMORANDUM DECISION

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

E S P I N O S A, Judge:

¶1 The State of Arizona appeals from the trial court's order dismissing criminal charges against appellee Joel Alday. For the reasons explained below, we affirm.

Procedural Background

¶2 In June 2012, Alday was convicted of one count of driving under the influence (DUI) with a defined drug or its metabolite in his body and one count of possession of marijuana.[1] At that time, Arizona law required DUI offenders to install an ignition interlock device in their vehicles for one year upon having their licenses reinstated. 2011 Ariz. Sess. Laws ch. 341, § 21. In 2016, the legislature amended the ignition interlock requirement to apply only to DUI convictions involving intoxicating liquor. 2016 Ariz. Sess. Laws ch. 57, §§ 1, 6. When Alday's license was reinstated in August 2017, his Motor Vehicle Department (MVD) record continued to reflect the requirement that he install an ignition interlock device.

¶3 In February 2018, Alday was stopped by a law enforcement officer while driving and was subsequently charged with two counts of aggravated DUI: one count for DUI impaired to the slightest degree while required to have an ignition interlock device, and one count for DUI with an alcohol concentration of .08 or more while required to have an ignition interlock device. After his first motion to dismiss the charges was unsuccessful, Alday filed a second motion to dismiss, arguing the aggravated DUI statute was void for vagueness because his conduct "would not support aggravated DUI under current law" and he therefore lacked notice that his conduct would nevertheless be an aggravated offense. He also argued that, as applied to him, the statute was vague as he "could not have known his conduct subjected him[] to an aggravated DUI because the statute, as written, says otherwise." At the hearing on the motion, the

[1]The state's brief refers to both these convictions and although they are not readily verifiable in our record, Alday does not dispute them.

state argued that the trial court should apply the pre-amendment law rather than the law when Alday was alleged to have committed the aggravated DUI. The court disagreed and granted the motion to dismiss. The state appealed, and we have jurisdiction pursuant to A.R.S. § 13-4032(1).

Discussion

¶4 Because the trial court granted Alday's motion to dismiss on purely legal grounds involving statutory interpretation, our review is de novo. *See State v. Matlock*, 237 Ariz. 331, ¶ 7 (App. 2015). When interpreting the meaning of a statute, we look first to the statute's language as the best and most reliable index of its meaning. *State v. Williams*, 175 Ariz. 98, 100 (1993). If the language is plain and unambiguous, we look no further. *State v. Morris*, 215 Ariz. 324, ¶ 74 (2007).

¶5 We are bound to interpret the statutes in effect at the time of Alday's alleged offenses. *See* A.R.S. § 1-246 (offender shall be punished under the law in force when the offense was committed); *cf. O'Brien v. Escher*, 204 Ariz. 459, ¶ 12 (App. 2003) (respondent judge required "to apply the law in effect at the time petitioners committed their offenses"). As relevant here, in 2018 and still currently, a person commits aggravated DUI by committing DUI "[w]hile . . . ordered by the court or required pursuant to [A.R.S. §] 28-3319 by the [MVD] to equip any motor vehicle the person operates" with an ignition interlock device. A.R.S. § 28-1383(A)(4); *cf. State v. Nelson*, 251 Ariz. 420, ¶¶ 17-18 (App. 2021) (knowledge of interlock order in effect on day of offense is element of aggravated DUI).

¶6 The state conceded below that the interlock device was not required pursuant to court order. Thus, Alday's alleged conduct could constitute aggravated DUI only if § 28-3319 was applicable. Although the version of § 28-3319 in effect when Alday was convicted of DUI in 2012 required the installation of an interlock device, 2011 Ariz. Sess. Laws ch. 341, § 21, the version in effect when his driver license was reinstated and then when his conduct giving rise to the instant charges occurred, required an interlock device only "for a violation that involved intoxicating liquor," 2016 Ariz. Sess. Laws ch. 57, § 6. Because Alday's prior DUI conviction was not alcohol-related and therefore an interlock device was not required pursuant to § 28-3319, we agree with the trial court that the state is unable as a matter of law to establish this required element of aggravated DUI.[2]

[2]We note that Rule 16.4(b), Ariz. R. Crim. P., allows a dismissal on a defendant's motion only if the trial court finds the indictment insufficient

¶7 The state nevertheless contends that because Alday "had a valid ignition interlock order, that had been placed at some point pursuant to A.R.S. § 28-3319 on his record at the time he was charged with aggravated DUI in 2018," the charges are permissible. The trial court rejected this argument, reasoning that the state was asking the court to read into the statute language the legislature did not include. We agree. The state essentially asks that we apply the elements of an outdated statute because the statutes in effect at the time of Alday's charged conduct would not penalize him as charged. But that interpretation would require us to ignore § 28-1383(A)(4)'s language that the interlock device be "ordered by the court or required pursuant to [§] 28-3319." We must give effect to each word and phrase in a statute so that no part is rendered meaningless. *State v. Larson*, 222 Ariz. 341, ¶ 14 (App. 2009). Notably, the state has failed to provide us with any apposite case law or even analogous authority to support its argument that "pursuant to A.R.S. § 28-3319" would include a superseded and no longer operative version of the statute. In light of our plain-language reading of the relevant statutes as noted above, we cannot say the court erred as a matter of law in dismissing Alday's charges.[3] *See Guard v. Maricopa County*, 14 Ariz. App. 187, 188-89 (1971) (appellant has

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as a matter of law. The trial court here did not find the indictment insufficient but instead dismissed it because "the State cannot prove . . . the elements of the ag[gravated] DUI charge." But the state has not raised this procedural issue on appeal, and we therefore do not address it further. *See State v. Barnett*, 209 Ariz. 352, n.2 (App. 2004). Nor, in light of our resolution of this issue, need we address Alday's alternative argument that the rule of lenity would limit his "maximum sentence" to no more than six months incarceration.

[3]The state also argues, without citation to supporting authority or the record, that an interlock device was required "as a statutory condition of [Alday's 2012] sentence." The state apparently did not raise this argument below and it may be deemed waived. *See State v. Brita*, 158 Ariz. 121, 124 (1988) (court of appeals should not consider new issue inserted by state on appeal); *cf. State v. Boteo-Flores*, 230 Ariz. 551, ¶ 7 (App. 2012) (state's arguments not raised below subject to waiver). But more importantly, nothing in the record before us supports the state's assertion. The record contains no relevant documents pertaining to Alday's 2012 conviction, and the state conceded at oral argument below that the interlock requirement was not imposed by court order. We therefore do not further consider this argument.

burden of demonstrating error below and "upon failure to do so, we have no alternative but to affirm").

Disposition

¶8 Because the state has demonstrated no trial court error, the court's order of dismissal is affirmed.