

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

FILED BY CLERK

AUG 11 2010

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2009-0383
)	DEPARTMENT B
Appellee,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
ROSARIO IGNACIO SOTO,)	the Supreme Court
)	
Appellant.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20082862

Honorable Jane L. Eikleberry, Judge

AFFIRMED

Law Offices of Harriette P. Levitt
By Harriette P. Levitt

Tucson
Attorney for Appellant

K E L L Y, Judge.

¶1 After a jury trial held in absentia, appellant Rosario Soto was convicted of aggravated driving under the influence of an intoxicant (DUI) and aggravated driving with an alcohol concentration (AC) of .08 or greater, both while his license was suspended, canceled, revoked, refused or restricted. The state had alleged that Soto had been convicted of DUI offenses twice previously and that he had three historical prior felony convictions. Following a hearing on the allegation of prior convictions conducted

after Soto was apprehended, the trial court confirmed he was the person found guilty of the charges and found he previously had been convicted of a felony in two causes. Counsel has filed a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), and *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999), avowing she has found no arguable issues to raise on appeal but requesting that we review the record for reversible error. Soto has not filed a supplemental brief.

¶2 Having reviewed the record, we find ample evidence was presented at the jury trial, which was lawfully held in Soto’s absence, to establish the elements of the offenses of which he was convicted. Specifically, adequate evidence established he had driven while under the influence of alcohol and impaired to the slightest degree, and that he had driven with an AC of greater than .08. Indeed, replicate breath tests established his AC was .122 and .124. Additionally, the state adequately proved the sentence-enhancement allegations.

¶3 We have also reviewed the record relating to the sentences imposed. The concurrent, presumptive and enhanced ten-year prison terms were as prescribed by the applicable statutes. Because we find no reversible error with respect to sentencing or otherwise, we affirm the convictions and the sentences imposed.

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge

CONCURRING:

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Judge