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

IN THE COURT OF APPEALS STATE OF ARIZONA DIVISION TWO

)

THE STATE OF ARIZONA,

Appellee,

v.

ROSARIO IGNACIO SOTO,

Appellant.

2 CA-CR 2009-0383 DEPARTMENT B

MEMORANDUM DECISION Not for Publication Rule 111, Rules of the Supreme Court

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20082862

Honorable Jane L. Eikleberry, Judge

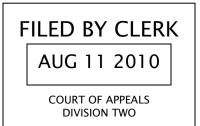
AFFIRMED

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

Tucson Attorney for Appellant

KELLY, 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 sentenceenhancement 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/ Virçinia C. Kelly VIRGINIA C. KELLY, Judge

CONCURRING:

1s/ Garye L. Vásquez GARYE L. VÁSQUEZ, Presiding Judge

151 Peter J. Eckerstrom PETER J. ECKERSTROM, Judge