FILED BY CLERK
JAN 29 2009
COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

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| THE STATE OF ARIZONA,<br><br>Appellee,<br><br>v.<br><br>ELIZABETH MICHELLE HERNANDEZ,<br><br>Appellant. | ) | 2 CA-CR 2008-0003<br>DEPARTMENT B<br><br>MEMORANDUM DECISION<br>Not for Publication<br>Rule 111, Rules of the Supreme Court |

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20064692

Honorable Howard Hantman, Judge

AFFIRMED

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Emily Danies — Tucson
Attorney for Appellant

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E C K E R S T R O M, Presiding Judge.

**¶1** In April 2006, with her young daughter as a passenger, appellant Elizabeth Hernandez drove her car over a curb and into a county-owned light pole. Injured in the

accident, Hernandez was taken by ambulance to a hospital where her blood was drawn. Later chemical analysis showed it contained an alcohol concentration of .101.

**¶2** Hernandez was indicted on four felony charges: aggravated driving under the influence of an intoxicant (DUI) with a minor present; reckless child abuse; endangerment; and criminal damage to property valued at more than $250 but less than $2,000. The state separately alleged that the endangerment count was a dangerous-nature offense and that Hernandez had two previous convictions. In November 2007, an eight-person jury found Hernandez guilty as charged. The trial court found she had one historical prior felony conviction and sentenced her to concurrent, presumptive, enhanced prison terms, the two longer for 2.25 years.

**¶3** Appellate 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), "setting forth a detailed factual and procedural history of the case with citations to the record, [so that] this court can satisfy itself that counsel has in fact thoroughly reviewed the record." *Id*. ¶ 32. Counsel states she has reviewed the record in compliance with *Anders* without finding any arguable legal issue to raise on appeal and asks us to search the record for fundamental error. Hernandez has not filed a supplemental brief.

**¶4** Pursuant to our obligation under *Anders*, we have reviewed the trial court record in its entirety and have searched for fundamental error, finding none. The record contains substantial evidence to support the jury's verdicts on each of the four counts of

conviction,[1] and the sentences imposed are the correct presumptive terms for Hernandez's two repetitive, class six felonies; one repetitive, class five felony; and one nonrepetitive, dangerous, class six felony. Having found no error, we affirm Hernandez's convictions and sentences.

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PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

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J. WILLIAM BRAMMER, JR., Judge

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GARYE L. VÁSQUEZ, Judge

[1]Despite having found "[n]o arguable question of law" for appeal, counsel nonetheless suggests the trial court's denial of Hernandez's motion for a judgment of acquittal pursuant to Rule 20, Ariz. R. Crim. P., "may provide the appearance of an arguable issue." Counsel's suggestion is refuted by our determination that substantial evidence existed to support the jury's verdict on each count, thus justifying the court's denial of Hernandez's Rule 20 motion. *See State v. Fulminante*, 193 Ariz. 485, ¶ 24, 975 P.2d 75, 83 (1999) (directed verdict of acquittal warranted only in absence of substantial evidence).