

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Appellee*,

v.

TROY DANIEL ARVISO, *Appellant*.

No. 1 CA-CR 15-0825
FILED 11-1-2016

Appeal from the Superior Court in Maricopa County
No. CR2015-113827-001
The Honorable Annielaurie Van Wie, Judge *Pro Tempore*

AFFIRMED

COUNSEL

Arizona Attorney General's Office, Phoenix
By Joseph T. Maziarz
Counsel for Appellee

Maricopa County Public Defender's Office, Phoenix
By Kevin D. Heade
Counsel for Appellant

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MEMORANDUM DECISION

Judge Randall M. Howe delivered the decision of the Court, in which Presiding Judge Diane M. Johnsen and Judge Andrew W. Gould joined.

H O W E, Judge:

¶1 This appeal is filed in accordance with *Anders v. California*, 386 U.S. 738 (1967) and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969). Troy Arviso was convicted of two counts of aggravated driving while under the influence (“DUI”). He was sentenced to concurrent terms of 4.5 years’ imprisonment with 48 days of presentence incarceration credit. Counsel for Arviso asks this Court to search the record for fundamental error. Arviso was given an opportunity to file a supplemental brief in propria persona. He has not done so. After reviewing the record, we affirm Arviso’s convictions and sentences.

FACTS AND PROCEDURAL HISTORY

¶2 We view the facts in the light most favorable to sustaining the trial court’s judgment and resolve all reasonable inferences against Arviso. *State v. Fontes*, 195 Ariz. 229, 230 ¶ 2, 986 P.2d 897, 898 (App. 1998).

¶3 In the early morning hours of December 25, 2014, a Phoenix police officer observed Arviso commit two traffic violations. The officer pulled Arviso over. When the officer approached Arviso’s car window, he noticed that Arviso smelled of alcohol, had bloodshot and watery eyes, and had slurred speech. Arviso told the officer that his license was revoked. Arviso admitted to drinking, and when asked how much he had to drink, he said, “[E]nough.” The officer asked Arviso to step out of his car to perform a sobriety test. Arviso was arrested shortly after failing the sobriety test.

¶4 After being read his *Miranda*¹ rights, Arviso agreed to provide a blood sample and answered questions. Arviso told the officer that he had four 16-ounce cans of beer and admitted that the alcohol affected his driving. At the police station, a licensed phlebotomist drew Arviso’s blood. A forensic scientist later determined that Arviso had a blood alcohol

¹ *Miranda v. Arizona*, 384 U.S. 436 (1966).

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concentration (“BAC”) of 0.317. The State charged Arviso with one count of aggravated DUI while under the influence while his driver’s license was suspended or revoked and one count of aggravated DUI with a BAC of 0.08 or higher while his license was suspended or revoked.

¶5 At trial, the arresting officer made an in-court identification of Arviso, and a Motor Vehicle Department custodian of record testified that Arviso’s license was suspended and revoked. The custodian of record also testified that Arviso was notified of the suspension by mail and was notified again when his license was revoked. After the State rested its case-in-chief, Arviso moved for judgment of acquittal pursuant to Arizona Rule of Criminal Procedure 20, arguing that the State failed to provide sufficient evidence to convince the jury that each element was proved beyond a reasonable doubt. The trial court denied the motion. The jury found Arviso guilty of aggravated DUI while under the influence and of aggravated DUI while under the influence with a BAC of 0.08 or higher.

¶6 The trial court conducted the sentencing hearing in compliance with Arviso’s constitutional rights and Arizona Rule of Criminal Procedure 26. The jury found beyond a reasonable doubt that this incident occurred while Arviso was on probation for another felony conviction. Additionally, the trial court found that Arviso had one historical prior felony conviction. The trial court sentenced Arviso to concurrent terms of 4.5 years’ imprisonment with 48 days of presentence incarceration credit. The trial court also imposed fines and administrative fees. Arviso timely appealed.

DISCUSSION

¶7 We review Arviso’s convictions and sentences for fundamental error. *See State v. Flores*, 227 Ariz. 509, 512 ¶ 12, 260 P.3d 309, 312 (App. 2011). Counsel for Arviso has advised this Court that after a diligent search of the entire record, counsel has found no arguable question of law. We have read and considered counsel’s brief and fully reviewed the record for reversible error, *see Leon*, 104 Ariz. at 300, 451 P.2d at 881, and find none. All of the proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure. So far as the record reveals, Arviso was represented by counsel at all stages of the proceedings, and the sentences imposed were within the statutory guidelines. We decline to order briefing and affirm Arviso’s convictions and sentences.

¶8 Upon the filing of this decision, defense counsel shall inform Arviso of the status of the appeal and of his future options. Counsel has no

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further obligations unless, upon review, counsel finds an issue appropriate for submission to the Arizona Supreme Court by petition for review. *See State v. Shattuck*, 140 Ariz. 582, 584–85, 684 P.2d 154, 156–57 (1984). Arviso shall have 30 days from the date of this decision to proceed, if he desires, with a pro per motion for reconsideration or petition for review.

CONCLUSION

¶9 For the foregoing reasons, we affirm.



AMY M. WOOD • Clerk of the Court
FILED: AA