

COURT OF APPEALS, DIVISION ONE

BRIEFS

SECTION 2

1 CA-CR 7116

STATE OF ARIZONA

Appellee,

v.

NICHOLAS VALENZUELA,

Appellant.

MARICOPA COUNTY
SUPERIOR COURT
NO. cr 105559

TRANSMITTAL DATE

901027

ORIGINAL

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,)
)
 Appellee,)
)
 v.)
)
 NICHOLAS VALENZUELA,)
)
 Appellant.)
 _____)

No. 1 CA-CR 7116
Maricopa County Superior
Court No. CR-105559

APPELLANT'S OPENING BRIEF

ROSS P. LEE
Maricopa County Public Defender

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DIVISION 1
COURT OF APPEALS
STATE OF ARIZONA

FILED JUL 25 1983

GLEN D. CLARK, CLERK
By W. S. [Signature]

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STATEMENT OF THE CASE

The Appellant, Nicholas Valenzuela, was charged by a complaint issued on January 30, 1979 with the crimes of Count I: Burglary in the Second Degree, a class 3 felony, and Count II: Sexual Abuse, a class 5 felony. Appellant was arraigned on February 15, 1979 and his trial was scheduled for April 4, 1979 before the Honorable Val A. Cordova.

Prior to trial, Appellant and his counsel entered into a plea agreement with the Maricopa County Attorney's Office. Appellant agreed to plead guilty to both charges in this case. The parties agreed that any sentences imposed would be served concurrently. The State also agreed to dismiss CR 105561. Judge Cordova accepted Appellant's pleas and set sentencing for May 29, 1979. The sentence was continued several times until August 31, 1979. After conducting a mitigation hearing, the Honorable Sarah D. Grant suspended the imposition of the sentence and placed Appellant on probation for a period of five years on Count I and three years on Count II. Judge Grant ordered that Appellant serve one year in the Maricopa County Jail as a term of this probation. Judge Grant modified this term to time served on April 4, 1980. Appellant was discharged from probation on Count II on November 16, 1982.

The Maricopa County Adult Probation Department filed a petition to revoke Appellant's probation on February 25, 1983. The petition alleged Appellant had violated term #1, by committing the crime of DWI on February 19, 1983 and term #8, by drinking an intoxicating beverage on the same date. Appellant received his initial appearance on March 10, 1983 and denied the allegations at his arraignment on March 17, 1983. The violation was set for April 6, 1983. At that time, Appellant entered admissions to both allegations. The Honorable Marilyn A. Riddel accepted the admissions and set the disposition for April 21, 1983. At that

time, Judge Riddel revoked Appellant's probation and sentenced him to serve five years in the Department of Corrections. The court gave Appellant credit for 187 days of presentence incarceration.

A timely notice of appeal was filed on April 27, 1983. The Appellant was represented throughout the proceedings below by the Maricopa County Public Defender's Office. This appeal is taken from the order of revocation entered and the sentence imposed on April 21, 1983.

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COMPLIANCE WITH ANDERS V. CALIFORNIA

Counsel for Appellant has searched the record on appeal pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967). No arguable question of law has been found. It is respectfully requested that this Court search the record for fundamental error pursuant to A.R.S. §13-4035. State v. Powell, 5 Ariz.App. 51, 423 P.2d 127 (1967).

Respectfully submitted,

ROSS P. LEE
Maricopa County Public Defender

By Michael G. Sullivan
MICHAEL G. SULLIVAN
Deputy Public Defender
Attorney for Appellant

TWO COPIES of Appellant's Opening Brief mailed this 25th day
of July, 1983, to ROBERT K. CORBIN, Attorney General of Arizona, 1275 W.
Washington, Criminal Division - 2nd Floor, Phoenix, Arizona 85007.

ONE COPY of Appellant's Opening Brief mailed this 25th day
of July, 1983, to NICHOLAS VALENZUELA, #47201, A.C.T.C.-P., San Juan, P.O.
Box 3300, Goodyear, Arizona 85338.

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