

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

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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2012-0229
)	DEPARTMENT B
Appellee,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
GREGORIO PEREZ-GOMEZ,)	the Supreme Court
)	
Appellant.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20094627001

Honorable Richard S. Fields, Judge

AFFIRMED

Thomas C. Horne, Arizona Attorney General
By Joseph T. Maziarz and Nicholas Klingerman

Tucson
Attorneys for Appellee

Lori J. Lefferts, Pima County Public Defender
By Kristine Maish

Tucson
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ESPINOSA, Judge.

¶1 After a bench trial, appellant Gregorio Perez-Gomez was convicted of two counts of aggravated driving while under the influence of an intoxicant and two counts of aggravated driving with a blood alcohol concentration (BAC) of .08 or greater (DUI). Two of those counts were aggravated based on Perez-Gomez having committed DUI two or more times in the preceding eighty-four months, and two were aggravated based on Perez-Gomez's driver license having been suspended. He additionally was convicted of fleeing from a law enforcement vehicle and aggravated assault. The trial court sentenced him to concurrent prison terms, the longest of which were twelve years. On appeal, Perez-Gomez argues there was insufficient evidence he had committed two or more DUI offenses within the preceding eighty-four months, and therefore two of his aggravated DUI convictions must be reversed.

¶2 We view the evidence in the light most favorable to upholding the verdicts. *See State v. Haight-Gyuro*, 218 Ariz. 356, ¶ 2, 186 P.3d 33, 34 (App. 2008). Perez-Gomez's convictions stem from a September 28, 2009, incident in which he twice fled in his vehicle from police officers attempting to conduct traffic stops. Once stopped and arrested, he was combative and spat on an officer. A blood test revealed his BAC to be .214. A Department of Motor Vehicles custodian of records confirmed his driver license had been revoked at the time of the incident. The state also presented several exhibits showing Perez-Gomez had been convicted of DUI in California in 2000 for an offense committed on October 18, 2000, and convicted in 2003 for a DUI offense committed on April 5, 2003, and had been sentenced to two-year prison terms for each offense. Perez-

Gomez argues those documents do not support his convictions for aggravated DUI because “[t]he actual time [he] served in custody . . . cannot be discerned from these documents.”

¶3 A conviction must be supported by “substantial evidence,” Ariz. R. Crim. P. 20, which is “such proof that ‘reasonable persons could accept as adequate and sufficient to support a conclusion of defendant’s guilt beyond a reasonable doubt.’” *State v. Mathers*, 165 Ariz. 64, 67, 796 P.2d 866, 869 (1990), quoting *State v. Jones*, 125 Ariz. 417, 419, 610 P.2d 51, 53 (1980). We will reverse a conviction for insufficient evidence “only where there is a complete absence of probative facts to support the conviction.” *State v. Soto-Fong*, 187 Ariz. 186, 200, 928 P.2d 610, 624 (1996), quoting *State v. Scott*, 113 Ariz. 423, 424-25, 555 P.2d 1117, 1118-19 (1976). And evidence remains sufficient to sustain a conviction even “if reasonable minds can differ on inferences to be drawn therefrom.” *State v. Landrigan*, 176 Ariz. 1, 4, 859 P.2d 111, 114 (1993).

¶4 Section 28-1383(A)(2), A.R.S., provides that a person is guilty of aggravated DUI if he or she “commits a third or subsequent” DUI offense “[w]ithin a period of eighty-four months.” “[A]cts in another jurisdiction that if committed in this state would” violate Arizona’s DUI statutes are included in calculating the number of offenses. *Id.* “The dates of the commission of the offenses are the determining factor in applying the eighty-four month provision,” and “the time that a person is incarcerated in any state, federal, county or city jail or correctional facility is excluded.” § 28-1383(B).

¶5 We disagree with Perez-Gomez that the exhibits admitted into evidence are insufficient to show he had committed his prior DUI offenses within eighty-four months of his current offenses. As we noted above, those documents show he was sentenced to two-year prison terms for each offense. If Perez-Gomez served those sentences in full and that time is excluded from the calculation, his current offenses clearly occurred within eighty-four months of his DUI offense committed on October 18, 2000.

¶6 Perez-Gomez argues, however, that the state “ma[d]e[] clear [that] these sentences were not served as ‘flat’ time.” In support of that contention, he references only a transcript from a pretrial hearing—not trial evidence. The documents submitted by the state establishing Perez-Gomez’s prior DUI offenses, however, do suggest he was not actually imprisoned for two years for each offense. The “chronological history” included with the records of his first conviction states he was “[p]arole[d] to USINS Hold” on December 10, 2001. The chronological history for his second conviction states he was “[p]arole[d]” on January 3, 2005. The trial court readily could conclude from those entries that Perez-Gomez had been released from incarceration on those dates. Based on those dates, his October 18, 2000, DUI offense occurred within eighty-four months of his current offenses. Thus, there was sufficient evidence supporting Perez-Gomez’s convictions for aggravated DUI based on his previous DUI offenses.¹

¹We therefore need not consider the state’s argument that Perez-Gomez had “stipulated” that his previous offenses were within eighty-four months. And, because we view the evidence in the light most favorable to upholding the verdicts, *see Haight-Gyuro*, 218 Ariz. 356, ¶ 2, 186 P.3d at 34, we reject Perez-Gomez’s contention that the

¶7

The convictions and sentences are affirmed.

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge

CONCURRING:

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

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

state “implicitly conceded[ed]” on appeal that the evidence was insufficient because it relied on its stipulation argument rather than assert the documents were sufficient.