

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



DIVISION ONE
FILED: 8/13/2013
RUTH A. WILLINGHAM,
CLERK
BY: mjt

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) 1 CA-CR 12-0484
)
Appellee,) DEPARTMENT A
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
ED ZAVALA TRUJILLO,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2008-005847-001

The Honorable Julie P. Newell, Judge Pro Tem

AFFIRMED

Thomas C. Horne, Attorney General Phoenix
By Joseph T. Maziarz, Acting Chief Counsel,
Criminal Appeals/Capital Litigation Section
and Melissa M. Swearingen, Assistant Attorney General
Attorneys for Appellee

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Attorneys for Appellant

G E M M I L L, Judge

¶1 Ed Zavala Trujillo appeals the sentences imposed on him after remand following this court's decision in *State v. Trujillo*, 227 Ariz. 314, 257 P.3d 1194 (App. 2011). Trujillo argues that the superior court abused its discretion by not finding Trujillo's background was a mitigating factor and by not reducing the sentences accordingly. For the reasons set forth below, we disagree and affirm the sentences.¹

BACKGROUND

¶2 In November 2008, a jury found Trujillo guilty on three counts of felony aggravated assault. At a hearing in December 2008, the State also established that Trujillo had two prior felony convictions. At his initial sentencing in February 2009, the superior court found that the "environment in which he was raised" had a "devastating effect" on Trujillo and considered this a mitigating factor when imposing sentences. The court also considered four aggravating factors during sentencing. First, at trial, the jury found beyond a reasonable doubt the aggravating factor of emotional harm to the victim. Pursuant to Arizona Revised Statute ("A.R.S.") section 13-701(D), the court further determined that Trujillo's criminal history, the short length of time between his last incarceration

¹ In his notice of appeal, Trujillo also purports to appeal his convictions. This court affirmed his convictions in *Trujillo*, 227 Ariz. at 322, ¶ 38, 257 P.3d at 1202, however, and Trujillo has focused his appeal on his sentences.

and the crimes in question, and his lack of remorse were aggravating factors. The court sentenced Trujillo to three aggravated prison terms: seventeen years on Count 1, ten and one-half years on Count 2, and twenty years on Count 3. All sentences were ordered to be served concurrently.

¶3 In Trujillo's initial appeal, this court found that the superior court violated Trujillo's Fifth Amendment rights against self-incrimination when it considered his failure to "own up" to the crime as an aggravating factor: "in considering Trujillo's lack of remorse and failure to admit guilt, the trial court deprived him of a right essential to his defense." *Trujillo*, 227 Ariz. at 318, ¶ 15, 257 P.3d at 1198. As a result of this error, we vacated the sentences and remanded the case for resentencing. *Id.* at 319, ¶ 21, 257 P.3d at 1199.

¶4 Trujillo was resentenced at a hearing in July 2012. In making its sentencing decisions, the superior court explained that it had examined the 2009 presentence report, all letters and recommendations, two mitigation reports, and statements from Trujillo and his family. It "considered all the possible mitigating circumstances" and found that the "aggravating circumstances [were] sufficiently substantial to warrant an aggravat[ed] sentence." The court did not find any mitigating factors. The court resentenced Trujillo to concurrent, aggravated sentences of fifteen years on Count 1, ten and one-

half years on Count 2, and eighteen years on Count 3.

¶15 On appeal, Trujillo argues that the superior court abused its discretion by failing to consider his background and upbringing as a mitigating factor. This court has jurisdiction pursuant to Article 6, Section 9 of the Arizona Constitution, and A.R.S. §§ 12-120.21 (2003), 13-4031 (2010), and -4033 (2010).

ANALYSIS

¶16 The determination of mitigating circumstances is entirely within the discretion of the sentencing court. *State v. Carbajal*, 177 Ariz. 461, 463, 868 P.2d 1044, 1046 (App. 1994). In determining whether mitigating factors exist, the trial court is bound to consider “[a]ny other factor that is relevant to the defendant’s character or background” A.R.S. § 13-701(E)(6). The court is not, however, obligated to find any mitigating factors. See *State v. Long*, 207 Ariz. 140, 148, ¶ 41, 83 P.3d 618, 626 (App. 2004). We will find abuse of discretion if a sentencing decision is “arbitrary or capricious, or when the court fails to conduct an adequate investigation into the facts relevant to sentencing.” *State v. Ward*, 200 Ariz. 387, 389, ¶ 6, 26 P.3d 1158, 1160 (App. 2001); see also *State v. Fillmore*, 187 Ariz. 174, 184–85, 927 P.2d 1303, 1313–14 (App. 1996) (finding that a court’s sentencing decision was arbitrary and capricious because it was determined by an

"inflexible, mechanical process").

¶7 Trujillo argues that the superior court's failure to find Trujillo's background to be a mitigating factor for sentencing purposes constitutes fundamental error. He presents no authority to support this claim, however. Contrary to Trujillo's contentions, the superior court is not bound by the determinations of the court in a prior sentencing. Rather, when a reviewing court vacates the sentence imposed and remands for reconsideration, the resentencing court sentences anew and is free to impose any terms legally allowable. *State v. Thomas*, 142 Ariz. 201, 204, 688 P.2d 1093, 1096 (App. 1984).

¶8 In accordance with statutory requirements, the superior court in this case examined the evidence presented at the initial sentencing hearing and considered additional statements made by Trujillo and his family. As explained above, the court was not required to find that this evidence established a mitigating factor. *See Long*, 207 Ariz. at 148, ¶ 41, 83 P.3d at 626. The court determined the new sentences to be imposed for each of the three convictions, two of which were reduced in comparison with the original, vacated sentences. We find nothing in this record to indicate that the court was arbitrary or capricious in imposing the new sentences. Furthermore, the sentences fall within the allowable statutory limits. *See A.R.S. § 13-703(J)* (Supp. 2012) (sentencing ranges

for category three repetitive offenders). We conclude, therefore, that there was no abuse of discretion during resentencing.

CONCLUSION

¶19 For the foregoing reasons, we affirm Trujillo's sentences.

/s/

JOHN C. GEMMILL, Judge

CONCURRING:

/s/

PETER B. SWANN, Presiding Judge

/s/

KENT E. CATTANI, Judge