

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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.

HABIBOU KOROMA, *Appellant*.

No. 1 CA-CR 22-0437, 1 CA-CR 22-0441, 1 CA-CR 22-0443
FILED 10-31-2023

Appeal from the Superior Court in Maricopa County

No. CR2019-108700-001

CR2013-434064-001

CR2010-129142-001

The Honorable Laura Johnson Giaquinto, Judge *Pro Tempore*

AFFIRMED

COUNSEL

Arizona Attorney General's Office, Phoenix

By Kevin M. Morrow

Counsel for Appellee

Maricopa Public Defenders Office, Phoenix

By Robert W. Doyle

Counsel for Appellant

MEMORANDUM DECISION

Judge Jennifer M. Perkins delivered the decision of the Court, in which Vice Chief Judge Randall M. Howe and Judge Daniel J. Kiley joined.

P E R K I N S, Judge:

¶1 Habibou Koroma timely appeals from the sentence imposed after he was convicted of two counts of aggravated driving while under the influence. He argues the superior court erred by accepting his counsel's stipulation to a prior conviction for sentencing purposes without complying with necessary requirements. For the following reasons, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

¶2 In December 2019, a Maricopa County grand jury indicted Koroma on two counts of aggravated driving while under the influence. The State moved to revoke Koroma's probation from a 2010 felony DUI conviction and from a separate 2013 misdemeanor DUI conviction.

¶3 After a four-day trial in June 2022, the jury convicted Koroma on both counts. Before the jury returned with its verdict, defense counsel informed the court that Koroma wished to stipulate that he was on probation for a prior felony conviction in order to avoid a trial on prior convictions. The superior court asked Koroma if "that [is] what you want to do," and Koroma answered, "Yes." After the jury returned guilty verdicts, the court found Koroma in automatic violation of his probation.

¶4 The superior court asked counsel to confirm again that Koroma was stipulating that he was on probation for one prior felony and then informed Koroma of the resulting sentencing range. Thereafter, the State asked if the court needed to do a "knowingly, intelligently, and voluntarily sort of colloquy to make sure that defendant is agreeing to stipulate to being on probation."

¶5 The court then asked Koroma if, with the advice of counsel, he knowingly, intelligently, and voluntarily stipulated that he was on probation; Koroma answered each question affirmatively. Finally, the court informed Koroma of the resulting sentencing range and that, because of the

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stipulation, the court could not sentence Koroma to less than the presumptive term. Koroma confirmed that he understood. Koroma did not at any point object to the court's colloquy.

¶6 The court sentenced Koroma to the presumptive term of 4.5 years imprisonment for his convictions. The court then sentenced Koroma to consecutive terms of 2.5 years' imprisonment for the felony probation violation, and a six-month jail incarceration term for the misdemeanor probation violation. Koroma appealed, and we have jurisdiction. A.R.S. §§ 12-120.21(A)(1), 13-4031, -4033(A)(1).

DISCUSSION

¶7 On appeal, and for the first time, Koroma argues the superior court erroneously accepted his stipulation to probation status for a prior felony conviction without following the procedures required by Arizona Rule of Criminal Procedure 17.6. Because Koroma did not object during the superior court's colloquy regarding his probation status, we conduct fundamental error review. *State v. Escalante*, 245 Ariz. 135, 140, ¶ 12 (2018).

¶8 Under fundamental error review, this Court "will not reverse unless the court committed error that was both fundamental and prejudicial." *Escalante*, 245 Ariz. at 140, ¶ 12. Because the State does not defend the superior court's Rule 17.6 colloquy, we assume without deciding that the superior court committed fundamental error. Determining prejudice requires an "objective inquiry," *State v. Fierro*, 254 Ariz. 35, 41, ¶ 21 (2022), and the defendant has the burden of showing prejudice, *id.*; see also *Escalante*, 245 Ariz. at 142, ¶ 21. A defendant can establish prejudice from a defective Rule 17.6 colloquy only, "by showing that the defendant would not have admitted the fact of the prior conviction had the colloquy been given." *State v. Morales*, 215 Ariz. 59, 62, ¶ 11 (2007). And "[w]hen sufficient evidence of prior convictions is in the record, remand to the trial court for a determination of prejudice is not necessary," even if the defendant can show that he would not have admitted the fact of the prior conviction. *State v. Gonzales*, 233 Ariz. 455, 458, ¶ 9 (App. 2013).

¶9 Koroma never objected to his presentence report which describes Koroma's 2010 felony conviction for aggravated DUI. On its own, "an unobjected-to presentence report showing a prior conviction to which the defendant stipulated without the benefit of a Rule 17.6 colloquy conclusively precludes prejudice and a remand under *Morales*." *Gonzales*, 233 Ariz. at 458, ¶ 11. And a judge is "entitled to take judicial notice of [a] prior finding of guilt without an admission by [the defendant]" when the

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judge also presided over the defendant's prior sentencing. *State v. Garrison*, 25 Ariz. App. 470, 472 (1976); *State v. Hopson*, 112 Ariz. 497, 499 (1975). Here, the judge simultaneously presided over Koroma's probation revocation proceedings for the 2010 conviction and reviewed the presentence reports from the prior convictions. Koroma failed to establish prejudice. Because we conclude that Koroma suffered no prejudice, we need not address the State's contention that Koroma invited the error.

¶10 Koroma also claims his stipulation did not comply with Arizona Rule of Criminal Procedure 27.9. But Rule 27.9 applies only to "an admission that the probationer violated a condition or regulation of probation" and not to an admission of probationary status. Ariz. R. Crim. P. 27.9(a). Rule 27.9 does not apply here.

CONCLUSION

¶11 We affirm Koroma's conviction and sentence.



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