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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: 01/28/2010  
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BY: GH

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

STATE OF ARIZONA, ) 1 CA-CR 08-0863  
)  
Appellee, ) DEPARTMENT E  
)  
v. ) **MEMORANDUM DECISION**  
) (Not for publication -  
CHRISTIAN LOUIS PRIEST, ) Rule 111, Rules of the  
) Arizona Supreme Court)  
Appellant. )  
)

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Appeal from the Superior Court in Maricopa County

Cause No. CR2007-144487-001 SE

The Honorable Helene F. Abrams, Judge

**AFFIRMED**

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Terry Goddard, Attorney General Phoenix  
By Kent E. Cattani, Chief Counsel,  
Criminal Appeals/  
Capital Litigation Section  
And Michael T. O'Toole, Assistant Attorney General  
Attorneys for Appellee

James Haas, Maricopa County Public Defender Phoenix  
By Stephen R. Collins, Deputy Public Defender  
Attorneys for Appellant

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O R O Z C O, Judge

¶1 Christian Louis Priest (Defendant) appeals from his convictions for one count of first-degree burglary, one count of theft by extortion, one count of aggravated assault, one count of

kidnapping, and the sentences imposed. For the reasons set forth below, we affirm.

#### **FACTS AND PROCEDURAL HISTORY**

¶12 On July 19, 2007, Defendant was indicted on one count of first-degree burglary, a class two dangerous felony; one count of extortion, a class two dangerous felony; one count of aggravated assault, a class three dangerous felony; and one count of kidnapping, a class four dangerous felony. The State also alleged two historical prior felony convictions and several other aggravating factors.

¶13 At a trial management conference held April 17, 2008, the State withdrew one of the alleged historical prior felony convictions. At the close of the hearing, defense counsel asked the court if there would be eight jurors and two alternates. The trial court responded in the affirmative.

¶14 On the first day of trial, during a break in the voir dire of the prospective jurors, the trial court and the parties had the following exchange:

THE COURT: Let me just confirm before we move on, regarding the number of jurors. It might be a tad late for that, but when we talked, you agreed it should be an eight person, plus two alternate jury. . . . [I]f the defendant is found guilty of each one of these acts, is it your opinion that those sentences cannot run consecutive?

DEFENSE COUNSEL: That's my opinion, yes.

PROSECUTOR: Yes, your Honor. Because they all arose out of the same circumstances and

involved the same victim, which is my understanding as well.

. . . .

DEFENSE COUNSEL: So therefore, we would be okay with an eight person.

Thereafter, the trial court proceeded to impanel eight jurors and two alternates.

¶15 After a five-day trial, the jury found Defendant guilty as charged. The jury also found the three aggravating factors alleged by the State for each of the counts. The trial court sentenced Defendant to an aggravated eighteen-year term of imprisonment for the first-degree burglary charge, an aggravated eighteen-year term of imprisonment for the theft by extortion charge, an aggravated ten-year term of imprisonment for the aggravated assault charge, and an aggravated seven-year term of imprisonment for the kidnapping charge. The court ordered that each of the sentences was to run concurrent to the others.

¶16 Defendant timely appealed. We have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution and Arizona Revised Statutes (A.R.S.) sections 12-120.21.A.1 (2003), 13-4031 (2001), and -4033 (Supp. 2009).<sup>1</sup>

#### DISCUSSION

¶17 Defendant's sole issue on appeal is that the trial court committed reversible error by impaneling only eight jurors rather

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<sup>1</sup> We cite the current version of the applicable statutes in which no revisions material to this decision have since occurred.

than twelve. Pursuant to Article 2, Section 23, of the Arizona Constitution, “[j]uries in criminal cases in which a sentence of death or imprisonment for thirty years or more is authorized by law shall consist of twelve persons. . . . In all other cases, the number of jurors, not less than six . . . shall be specified by law.” As set forth in A.R.S. § 21-102 (2002)<sup>2</sup>, an eight-person jury is acceptable in all cases when the maximum sentence the defendant is exposed to is less than thirty years.

¶18 Defendant asserts he was faced with the possibility of thirty years or more of imprisonment for the charged offenses and therefore, the trial court’s failure to impanel a twelve-person jury amounts to error that requires us to vacate both his convictions and sentences and remand the matter for a new trial. Assuming without deciding that Defendant was faced with the possibility of thirty or more years of imprisonment, we disagree that this requires us to vacate his convictions and sentences and remand for a new trial.

¶19 Our supreme court recently held that a defendant’s trial to an eight-person jury when a sentence of thirty years or more was

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<sup>2</sup> Section 21-102 provides, in part:

A. A jury for trial of a criminal case in which a sentence of death or imprisonment for thirty years or more is authorized by law shall consist of twelve persons, and the concurrence of all shall be necessary to render a verdict.

B. A jury for trial in any court of record of any other criminal case shall consist of eight persons, and the concurrence of all shall be necessary to render a verdict.

authorized by law did not violate the Arizona Constitution. *State v. Soliz*, 223 Ariz. 116, \_\_\_, ¶ 16, 219 P.3d 1045, 1049 (2009). In that case, Soliz was charged with possession of dangerous drugs for sale. *Id.* at \_\_\_, ¶ 2, 219 P.3d at 1046. With the charged offense and the State's allegation of two historical prior felony convictions, Soliz faced a maximum of thirty-five years in prison. *Id.* The trial court impanelled a jury of eight and one alternate without objection from either the State or Soliz. *Id.* at \_\_\_, ¶ 3, 219 P.3d at 1046. The jury found Soliz guilty as charged, but the State declined to prove any of Soliz's prior convictions or aggravating factors. *Id.* Instead, the State requested a presumptive sentence of ten years' imprisonment, which the trial court imposed. *Id.*

¶10 On appeal, Soliz argued he was deprived of his constitutional right to a twelve-person jury. *Id.* at \_\_\_, ¶ 4, 219 P.3d at 1046. Our supreme court disagreed and reasoned that the failure to request a twelve-person jury precluded the State's "ability to obtain a sentence of thirty years or more." *Id.* at \_\_\_, ¶ 16, 219 P.3d at 1049. The supreme court held: where a maximum sentence of thirty years or more is authorized; neither party requests a jury of twelve; the trial court does not impanel a jury of twelve; and the law permits the imposition of a lesser sentence for the crime charged, then the twelve-person guarantee of

Article 2, Section 23 is not triggered and a sentence of thirty years or more is not permitted. *Id.*

¶11 In the present case, neither Defendant nor the State requested a twelve-person jury, the trial court did not impanel a twelve-person jury, and Defendant has not argued that the law did not permit the imposition of the eighteen-year sentence he received. Therefore, once a jury of less than twelve persons began deliberations, Defendant could not, as a matter of law, receive a sentence of thirty years or more. Because Defendant properly received a sentence of less than thirty years, we conclude there was no error requiring reversal.

**CONCLUSION**

¶12 For the foregoing reasons, we affirm Defendant's convictions and sentences.

/s/

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PATRICIA A. OROZCO, Judge

CONCURRING:

/s/

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PHILIP HALL, Presiding Judge

/s/

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GARYE L. VASQUEZ, Judge