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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  
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IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

STATE OF ARIZONA, ) No. 1 CA-CR 09-0083  
)  
Appellee, ) DEPARTMENT B  
)  
v. ) **MEMORANDUM DECISION**  
) (Not for Publication -  
THOMAS JOHN SMEDEMA, ) Rule 111, Rules of the  
) Arizona Supreme Court)  
Appellant. )  
)  
\_\_\_\_\_ )

Appeal from the Superior Court in Maricopa County

Cause No. CR 2008-132352-001 DT

The Honorable John R. Hannah, Jr., Judge

**AFFIRMED**

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Terry Goddard, Arizona Attorney General Phoenix  
By Kent E. Cattani, Chief Counsel  
Criminal Appeals/Capital Litigation Section  
Attorneys for Appellee

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

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**D O W N I E**, Judge

¶1 Thomas John Smedema ("defendant") timely appeals his conviction for criminal trespass in violation of Arizona Revised

Statutes ("A.R.S.") section 13-1504 (2009).<sup>1</sup> Pursuant to *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), defense counsel has advised that he has thoroughly searched the record and found no arguable question of law. On behalf of his client, counsel asks this Court to consider whether there was sufficient evidence of defendant's guilt and of an historical prior felony conviction.<sup>2</sup> We also review the record for fundamental error. See *State v. Richardson*, 175 Ariz. 336, 339, 857 P.2d 388, 391 (App. 1993). Defendant was given an opportunity to file a supplemental brief *in propria persona*, but he has not done so. On appeal, we view the evidence in the light most favorable to sustaining the conviction. *State v. Tison*, 129 Ariz. 546, 552, 633 P.2d 355, 361 (1981), *cert. denied*, 459 U.S. 882 (1982).

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<sup>1</sup> We cite to the current version of the applicable statute because no revisions material to this decision have occurred.

<sup>2</sup> Although defense counsel also mentions proceedings regarding a suppression motion, he assigns no error to the court's ruling, and we find no fundamental error. Similarly, counsel mentions the prosecutor's use of a peremptory strike to remove a minority juror from the venire, but develops no argument on that point. The record shows the trial judge considered Defendant's objection, but found the defense had failed to make a prima facie showing of discrimination. See *State v. Canez*, 202 Ariz. 133, 146, ¶ 23, 42 P.3d 564, 577 (2002). That determination is supported by the record.

## FACTS AND PROCEDURAL BACKGROUND

¶12 On May 23, 2008, a house in Phoenix stood vacant with a sign indicating it was for sale. The owner had not given permission for defendant to be on the property. Officer M.P. received a call that a "suspicious person" was at the house. Officer M.P. and his partner arrived and found a person, later identified as defendant, inside the house. Officer M.P. twice announced himself as an officer and ordered defendant outside. Officer M.P. cuffed defendant and patted him down for weapons, then sat him near the back of the house while other officers checked the house. Officer M.P. did not read *Miranda* warnings. Defendant "voluntarily" told Officer M.P. he was in the neighborhood, "saw a vacant house and entered to see what he could find." Defendant also said he did not know the owner or have permission to be on the premises.

¶13 After Officer M.P. testified at trial, the State rested. Defendant moved for a judgment of acquittal pursuant to Arizona Rule of Criminal Procedure ("Rule") 20. The motion was denied.

¶14 The defense presented two witnesses, including defendant. Defendant testified he was stopped by two people on the street who asked for a cigarette. During the ensuing conversation, one of the persons allegedly pointed down the

street at the house, said they were moving, and gave defendant permission go inside and take anything left there.

¶15 After defendant's testimony, the defense rested and renewed its request for a judgment of acquittal. The request was denied. The jury found defendant guilty of criminal trespass in the first degree, a class 6 felony. Defendant was found to have one historical prior, and he was sentenced to a "slightly mitigated" term of 1.25 years, with two days' pre-sentence incarceration credit.

#### **DISCUSSION**

¶16 We have considered the brief submitted by defense counsel and have reviewed the entire record. See *Leon*, 104 Ariz. at 300, 451 P.2d at 881. We find no fundamental error. All of the proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure, and the sentence imposed was within the statutory range. Defendant was present at all critical phases of the proceedings and represented by counsel. The jury was properly impaneled and instructed. At the conclusion of trial, the jury instructions were consistent with the charged offense. The record reflects no irregularity in the deliberation process.

##### **1. Evidence of Guilt**

¶17 The trial court properly denied defendant's Rule 20 motion. A judgment of acquittal is appropriate only when there

is "no substantial evidence to warrant a conviction." Ariz. R. Crim. P. 20. Substantial evidence 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) (citation omitted). "Reversible error based on insufficiency of the evidence occurs 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).

¶18 The State presented substantial evidence of guilt. Officer M.P. saw defendant in the house. The owner had not given defendant permission to be there. According to Officer M.P., defendant said he entered the property "to see what he could find" and that he did not know the owner or have permission to be there. Although defendant testified differently at trial, a reasonable juror could have found him guilty based on the State's evidence.

## **2. Prior Felony Convictions**

¶19 The State alleged defendant had three prior felony convictions.<sup>3</sup> Immediately prior to sentencing, the court held a

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<sup>3</sup> CR 99-91315, possession of dangerous drugs, a class 4 felony, committed September 26, 1997, for which defendant was convicted May 26, 1999; CR 99-90445, possession of dangerous drugs, a class 4 felony, committed May 29, 1998, for which

trial regarding the priors. At that proceeding, defendant argued: (1) the fingerprint-identification method used to link him to the prior convictions deviated from accepted scientific procedures, (2) it was inappropriate for the trial court to take judicial notice of an uncertified minute entry,<sup>4</sup> and (3) the 1997 minute entry was inadmissible hearsay because it was not certified.

**a. Fingerprint Process**

¶10 A trial court's decision regarding the admission of evidence will not be overturned absent a clear abuse of discretion and resulting prejudice. *Schwartz v. Farmers Ins. Co. of Ariz.*, 166 Ariz. 33, 37, 800 P.2d 20, 24 (App. 1990) (citation omitted). Generally, a trial court abuses its discretion where an error of law is committed in reaching its

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defendant was convicted May 26, 1999; and CR 97-94638, endangerment, a class 6 felony, committed October 21, 1997, for which defendant was convicted November 11, 1997.

We note a minor discrepancy between the minute entry from the trial on priors and the oral pronouncement regarding prior convictions. When such a discrepancy is found, a reviewing court must try to ascertain the trial court's intent by reference to the record. *State v. Stevens*, 173 Ariz. 494, 496, 844 P.2d 661, 663 (App. 1992) (citation omitted). The minute entry states the date of conviction in CR 99-90455 is "05/26/98". During trial, however, the date of conviction was stated as "May 26, 1999." The certified minute entry admitted at trial lists a conviction date of May 26, 1999. The minute entry from the trial on priors should therefore be corrected.

<sup>4</sup> At trial, defendant also objected to the 1999 minute entries, asserting they were not certified copies. The State, however, demonstrated those minute entries were certified, but admitted the 1997 minute entry was not.

decision or the record fails to provide substantial support for the court's decision. *State v. Cowles*, 207 Ariz. 8, 9, ¶ 3, 82 P.3d 369, 370 (App. 2004) (citation omitted).

¶11 According to Defendant, the fingerprint identification method was "tainted by suggestibility" because it allowed a fingerprint technician to make a tentative identification before passing it along to a scientist for corroboration. The State presented extensive evidence regarding the process used and the identifying scientist's experience and training with fingerprints, including twenty-five years gathering fingerprints and seven years identifying them. The expert refuted defendant's assertion that the process was tainted, stating: "[I]f I make a mistake and misidentify someone, I'm basically out the door, my career is shot. So I don't really care what someone else said. I review the entire comparison in my own mind to make my own decision on it," and that he had refused on prior occasions to verify fingerprints. The record provides substantial support for the court's acceptance of the fingerprint evidence.

**b. Admissibility of Minute Entries**

¶12 Two of the minute entries establishing two prior convictions were certified. Defendant objected when the trial court took judicial notice of an uncertified, but signed, minute

entry from the Maricopa County Superior Court that established a third prior felony conviction.

¶13 "The superior court may properly take judicial notice of its own records." *State v. Camino*, 118 Ariz. 89, 90, 574 P.2d 1308, 1309 (App. 1977). Any fact judicially noticed is conclusively established. See Ariz. R. Evid. 201(g) ("The court shall instruct the jury to accept as conclusive any fact judicially noticed.") Because it was proper for the court to take judicial notice of the uncertified minute entry, and the State's witnesses tied the fingerprint on that minute entry to defendant, the third felony conviction was established, and defendant was properly sentenced with an historical prior felony.

#### CONCLUSION

¶14 We affirm defendant's conviction and sentence. Counsel's obligations pertaining to defendant's representation in this appeal have ended. Counsel need do nothing more than inform defendant of the status of the appeal and his future options, unless counsel's review reveals an issue appropriate for submission to the Arizona Supreme Court by petition for review. *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984). On the court's own motion, defendant shall have



thirty days from the date of this decision to proceed, if he so desires, with an *in propria persona* motion for reconsideration or petition for review.

/s/  
MARGARET H. DOWNIE, Judge

CONCURRING:

/s/  
PATRICIA K. NORRIS, Presiding Judge

/s/  
SHELDON W. WEISBERG, Judge