

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

IN THE
COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



DIVISION ONE
FILED: 03-23-2010
PHILIP G. URRY, CLERK
BY: DN

STATE OF ARIZONA,) 1 CA-CR 09-0165 PRPC
)
Respondent,) DEPARTMENT A
)
v.) Maricopa County
) Superior Court
LONNIE EDWARD HANSEL,) No. CR 2007-151611-002 DT
)
Petitioner.)
) **DECISION ORDER**
)
)
_____)

Lonnie Edward Hansel petitions this court to review the denial of post-conviction relief. Presiding Judge Maurice Portley, and Judges Lawrence F. Winthrop and Margaret H. Downie, have considered this petition for review and, although we find the trial court erred, we grant review but deny relief for the reasons stated.

FACTS AND PROCEDURAL HISTORY

We discuss only the facts necessary to our disposition of this matter. Hansel has at least four prior felony convictions. While on felony release, Hansel pled guilty to kidnapping, a class two felony, with one prior felony conviction; theft of means of transportation, a class three

felony, with one prior felony conviction; and criminal trespass in the first degree, a class six felony. Hansel stipulated to concurrent but aggravated sentences for the kidnapping and theft offenses. He also admitted two aggravating circumstances: (1) that he committed the offense in the expectation of the receipt of pecuniary gain, and (2) that the victim of the offense was over eighty years of age. Ariz. Rev. Stat. § 13-702(C)(6) and (13) (Supp. 2009).¹ The State agreed to dismiss the allegation of other prior felonies, and counts 2, 3, 4 and 5 in the indictment.

The trial court accepted the plea and later sentenced Hansel according to its terms. Hansel then timely filed post-conviction relief proceedings,² and raised two claims. Hansel argued that his plea was invalid because there was an insufficient factual basis to establish the prior felony conviction. He also argued that his plea was invalid because the court did not separately advise Hansel regarding the rights

¹ The statute was renumbered to A.R.S. § 13-701(D)(6) and (13), but the former and current statutes have not been amended in any material way.

² For pleading defendants like Hansel, the post-conviction relief "of-right" proceeding is the functional equivalent of a direct appeal. *State v. Ward*, 211 Ariz. 158, 161-62, ¶ 9, 118 P.3d 1122, 1125-26 (App. 2005).

and consequences of his admission to the aggravating circumstances. The State argued that the extended record supplied an adequate factual basis for the prior felony conviction, and that regardless of the trial court's advice to Hansel, the record conclusively demonstrated Hansel's plea was a knowing, voluntary and intelligent plea. The trial court "agree[d] with the arguments contained in the State's response," and summarily dismissed. Hansel then timely filed this petition for review.

DISCUSSION

On review, Hansel maintains that his plea is invalid because the trial court failed to establish a sufficient factual basis for the prior felony conviction, and that the court did not adequately advise him regarding the rights and consequences of his admission to the aggravating circumstances.

The trial court did not establish a sufficient factual basis for the prior felony at the change of plea hearing. The Arizona Supreme Court has held, however, that even when a factual basis is not set forth in the record of the change of plea hearing, such a deficiency in the record is technical, not reversible, error when the extended record establishes a factual

basis for a guilty plea. *State v. Rodriguez*, 112 Ariz. 193, 194-95, 540 P.2d 665, 666-67 (1975); accord *State v. Mendiola*, 23 Ariz. App. 251, 252-54, 532 P.2d 193, 194-96 (1975), approved and adopted in 112 Ariz. 165, 540 P.2d 131 (1975). The supreme court also has noted that the "factual basis may be ascertained from the record including pre-sentence reports, preliminary hearing reports, admissions of the defendant, and from other sources." *State v. Varela*, 120 Ariz. 596, 598, 587 P.2d 1173, 1175 (1978) (emphasis added). This court may take judicial notice of the records of the superior court. *State v. Valenzuela*, 109 Ariz. 109, 110, 506 P.2d 240, 241 (1973).

The records of the Maricopa County Superior Court show that Hansel was convicted of theft of means of transportation, a class 3 felony, committed on December 31, 1997, in cause number CR2002-009515, and that Hansel was represented by counsel, all as stated in the plea agreement. Because Hansel does not contend that he does not have a prior felony, or that this prior felony is invalid, his claim establishes technical error only, and does not entitle him to relief. *Rodriguez*, 112 Ariz. at 194-95, 540 P.2d at 666-67.

As to his agreement to admit to two aggravating factors, Hansel correctly argues the trial court failed to separately advise him of the rights he waived, and of the consequences of the admissions. *State v. Brown*, 212 Ariz. 225, 230-31, ¶¶ 24-26, 129 P.3d 947, 952-53 (2006) (admissions to aggravating factors must be warned pursuant to *Blakely v. Washington*, 542 U.S. 296 (2004)). Nevertheless, the court found Hansel's prior felonies as aggravators and thus the court's failure to properly advise him is harmless error. Prior felonies are exempt from *Blakely's* jury right. *Apprendi v. New Jersey*, 530 U.S. 466 (2000), and the existence of a single *Blakely* exempt aggravating factor, permits the sentencing judge to find and consider additional factors relevant to the imposition of a sentence up to the maximum prescribed in that statute. *State v. Martinez*, 210 Ariz. 578, 585, ¶ 26, 115 P.3d 618, 625 (2005). In other words, any error is completely harmless because, once the trial court found Hansel's prior felonies as an aggravating circumstance, Hansel had no *Blakely* jury right on any other aggravators, and any admissions became unnecessary/irrelevant, as the trial court was free to find any other aggravators. *Cf. State v. Molina*, 211 Ariz. 130, 136, ¶

23, 118 P.3d 1094, 1100 (App. 2005) (any error is harmless error because, once appellate court finds one aggravating factor, the court need not address other aggravating circumstances).

Finally, we note Hansel stipulated to aggravated sentences and received exactly the sentences he bargained for. Thus, he clearly had knowledge and a full understanding of the consequences of his plea agreement. *Cf. State v. Morales*, 215 Ariz. 59, 62, ¶¶ 11-13, 157 P.3d 479, 482 (2007) (trial court's failure to engage defendant in plea colloquy of rights and consequences of admitting prior convictions after trial, although error, not reversible).

CONCLUSION

For the reasons stated, Hansel's claims established only technical error and he is not entitled to relief. Therefore, we grant review, but deny relief.

/S/

MAURICE PORTLEY, Presiding Judge