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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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RUTH WILLINGHAM,  
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IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

STATE OF ARIZONA, ) No. 1 CA-CR 09-0672  
 )  
Appellee, ) DEPARTMENT B  
 )  
v. ) MEMORANDUM DECISION  
 )  
TRAVIS CHRISTOPHER BAKER, ) (Not for Publication -  
 ) Rule 111, Rules of the  
Appellant. ) Arizona Supreme Court)  
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Appeal from the Superior Court in Maricopa County

Cause No. CR 2009-111266-001 DT

The Honorable Lisa Ann Vandenberg, Judge *Pro Tempore*

**AFFIRMED**

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J O H N S E N, Judge

¶1 Travis Christopher Baker was convicted of possession of marijuana, a Class 1 misdemeanor. Although the superior court found Baker ineligible for mandatory probation because he had a prior violent-crime conviction, the court nevertheless suspended Baker's sentence and imposed ten months of unsupervised probation. Baker appeals the imposition of probation and requests resentencing pursuant to Arizona Revised Statutes ("A.R.S.") section 13-901.01 (2010).<sup>1</sup>

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

¶2 One week before Baker's trial, the State filed an "Allegation of Prior Dangerous and/or Violent Convictions," in which it alleged Baker was ineligible for mandatory probation pursuant to A.R.S. § 13-901.01(A) because of a prior conviction of a violent crime. Baker moved to strike the allegation, arguing it was untimely and prejudicial. The superior court deferred ruling until after trial.

¶3 At the sentencing hearing following Baker's conviction, the State presented evidence of Baker's previous conviction for assault causing physical injury, a violent crime within the meaning of A.R.S. § 13-901.03(B) (2010).<sup>2</sup> The State

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<sup>1</sup> Absent material revisions after the date of an alleged offense, we cite the statute's current version.

<sup>2</sup> A violent crime for this purpose is one that "includes any criminal act that results in death or physical injury . . . ." A.R.S. § 13-901.03(B).

nonetheless recommended the court place Baker on unsupervised probation. The presentence report recommended 12 months of supervised probation; defense counsel urged the court to impose 12 months of unsupervised probation. The court found that Baker's prior conviction precluded mandatory probation pursuant to A.R.S. § 13-901.01(A), but suspended sentence and imposed a ten-month term of unsupervised probation.

¶4 We have jurisdiction of Baker's appeal pursuant to Article 6, Section 9, of the Arizona Constitution and A.R.S. § 12-120.21(A)(1) (2003).

#### DISCUSSION

##### A. Standard of Review.

¶5 We review sentencing determinations for abuse of discretion. *State v. Davolt*, 207 Ariz. 191, 216, ¶ 112, 84 P.3d 456, 481 (2004). Whether the superior court applied the correct sentencing statute, however, is a question of law, which we review *de novo*. *State v. Hollenback*, 212 Ariz. 12, 16, ¶ 12, 126 P.3d 159, 163 (App. 2005).

##### B. The Superior Court Did Not Violate Arizona Law or Breach Baker's Constitutional Rights in Holding that His Prior Offense Precluded Mandatory Probation.

¶6 With some exceptions, Arizona law requires the superior court to suspend imposition of sentence and impose probation on one who is convicted of personal possession or use of a controlled substance. A.R.S. § 13-901.01. The statute

does not apply to a defendant who has been convicted of a violent crime, however. A.R.S. § 13-901.01(B). The procedure by which the State must allege a prior violent crime is set out in A.R.S. § 13-901.03(A), which provides:

The allegation that the defendant committed a violent crime shall be charged in the indictment or information and admitted or found by the court. The court shall allow the allegation that the defendant committed a violent crime at any time before the date the case is actually tried unless the allegation is filed fewer than twenty days before the case is actually tried and the court finds on the record that the defendant was in fact prejudiced by the untimely filing and states the reasons for these findings.

¶7 Baker first argues the superior court should have barred the State's violent-crime allegation as untimely pursuant to A.R.S. § 13-901.03(A). When applying a statute, we look to its plain language and give meaning to each word and phrase "so that no part is rendered void, superfluous, contradictory or insignificant." *State v. Larson*, 222 Ariz. 341, 344, ¶ 14, 214 P.3d 429, 432 (App. 2009) (quoting *Pinal Vista Props., L.L.C. v. Turnbull*, 208 Ariz. 188, 190, ¶ 10, 91 P.3d 1031, 1033 (App. 2004)).

¶8 The statute provides that the court shall allow a violent-crime allegation filed within 20 days of trial unless it "finds on the record that the defendant was in fact prejudiced by the untimely filing." A.R.S. § 13-901.03(A). In the

superior court, Baker argued he was prejudiced because he might have accepted a prior plea offer if he had known he would be ineligible for mandatory probation. Baker points to nothing in the record on appeal, however, showing that the plea offer he rejected was available to him as late as 20 days prior to trial or that the offer was preferable to the conviction and disposition ultimately ordered by the court. Nor on appeal does Baker explain how the late filing of the allegation impaired his ability to disprove the allegation.

¶19 Baker also argues that by allowing the allegation, the superior court violated his rights under the Sixth Amendment to the United States Constitution and Article 2, Sections 24 and 30 of the Arizona Constitution. See *Montero v. Foreman*, 204 Ariz. 378, 381, ¶ 11, 64 P.3d 206, 209 (App. 2003).<sup>3</sup> Fundamental fairness and due process are protected by providing a defendant with adequate notice of the possibility of an enhanced sentence. See *State v. Benak*, 199 Ariz. 333, 337, ¶ 14, 18 P.3d 127, 131 (App. 2001). Proper notice is notice that does not mislead, surprise or deceive. *Id.* at 337, ¶ 16, 18 P.3d at 131 (quoting

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<sup>3</sup> The Sixth Amendment to the United States Constitution, applicable to the states via the Fourteenth Amendment, requires that “[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be informed of the nature and cause of the accusation.” U.S. Const. amend. VI; e.g., *Gray v. Raines*, 662 F.2d 569, 572 (9th Cir. 1981).

*State v. Bayliss*, 146 Ariz. 218, 219, 704 P.2d 1363, 1364 (App. 1985)).

¶10 Our supreme court recently made clear that an amendment to a charge does not violate the Sixth Amendment unless the defendant is "actually prejudiced" by insufficient notice. *State v. Freeney*, 223 Ariz. 110, 115, ¶ 29, 219 P.3d 1039, 1044 (2009). Assuming for purposes of argument that the Sixth Amendment applies to a late-filed allegation of a violent-crime conviction under A.R.S. § 13-901.03(A), the record in this case contains no evidence that Baker was "actually prejudiced" by the timing of the filing of the allegation in this case. As noted, Baker points to nothing in the record showing he rejected a plea offer that was more favorable than the disposition actually imposed. Moreover, the State proved Baker's prior conviction of a violent offense by way of a certified copy of the conviction; Baker does not argue that additional notice could have enabled him to disprove the fact of his prior conviction.

¶11 Citing *State v. Bruce*, 125 Ariz. 421, 610 P.2d 55 (1980), Baker argues that a pretrial amendment to a charge violates the Sixth Amendment if it changes the nature of the offense or it prejudices the defendant in any way. But *Bruce* concerned Arizona Rule of Criminal Procedure 13.5 and did not

address the Sixth Amendment. See *Freeney*, 223 Ariz. at 113, ¶ 22, 219 P.3d at 1042.

¶12 Baker's brief asserts in passing that the allegation violated "the Arizona Rules of Criminal Procedure which require proper notice" but does not support that contention with authorities or argument. The same is true with his contention that a violent-crime allegation under A.R.S. § 13-901.03(A) must be tried to a jury. We will not consider legal arguments that are not fully developed or that lack citations to authority. *State v. Moody*, 208 Ariz. 424, 452 n.9, ¶ 101, 94 P.3d 1119, 1147 n.9 (2004).

#### CONCLUSION

¶13 The superior court breached neither Arizona law nor Baker's constitutional rights by allowing the State's tardy violent-crime allegation. Therefore, we affirm the court's imposition of probation.

/s/

DIANE M. JOHNSEN, Presiding Judge

CONCURRING:

/s/

MICHAEL J. BROWN, Judge

/s/

JOHN C. GEMMILL, Judge