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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA, Appellee, v. MICHAEL WILLIAM CROOKS II, Appellant.	2 CA-CR 2011-0226 DEPARTMENT A MEMORANDUM DECISION Not for Publication Rule 111, Rules of the Supreme Court

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20091658001

Honorable Howard Fell, Judge Pro Tempore

AFFIRMED IN PART, VACATED IN PART, AND REMANDED WITH DIRECTIONS

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E C K E R S T R O M, Presiding Judge.

¶1 Following a 2010 jury trial conducted in his absence, appellant Michael Crooks was convicted of possession of a dangerous drug for sale (count one) and possession of drug paraphernalia (count two). The trial court sentenced him in 2011 to a minimum term of five years' imprisonment on both counts, to be served concurrently with the sentence in another matter and a federal sentence he was already serving. On appeal, Crooks does not challenge his convictions, but instead argues the court erred in imposing one sentence for the entire case without distinguishing between the two counts on which he was convicted, and asks that we remand the case for correction. For the reasons set forth below, we affirm in part, vacate in part, and remand with directions.

¶2 At the sentencing hearing, the trial court told Crooks, "[i]n 20091658, your sentence is a mitigated term of five years," while the written sentencing minute entry order reflects "a minimum term of five (5) years" on each of the two counts. The court's oral pronouncement at sentencing did not provide a distinct sentence for each of the counts. Rather, in what appears to have been an oversight, the court grouped the sentences for the two offenses together under one sentence applicable to the entire case. The parties appear to agree that the sentence on count one is correct. However, to the extent the sentencing minute entry order also provides a five-year prison term for possession of drug paraphernalia, a class six felony, *see* A.R.S. § 13-3415(A), that sentence is not within the statutory sentencing range for that offense. *See* A.R.S. § 13-702(D). The state concedes the court erred, but asks that we correct the error rather than remanding for correction. In our discretion, we remand and direct the court to impose a separate sentence on count two, as it apparently had intended to do in the first instance.

¶3 For the reasons stated above, we affirm Crooks's convictions and his sentence on count one, but remand the case for correction of his sentence for count two as directed in this decision.

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Judge