

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Appellee*,

v.

PATRICK JAMES ZOTIKA, *Appellant*.

No. 1 CA-CR 14-0512
FILED 12-10-2015

Appeal from the Superior Court in Maricopa County
No. CR2013-436207-001 DT
The Honorable Christine E. Mulleneaux, Judge *Pro Tempore*

AFFIRMED IN PART; VACATED AND REMANDED IN PART

COUNSEL

Arizona Attorney General's Office, Phoenix
By Craig W. Soland
Counsel for Appellee

Maricopa County Public Defender's Office, Phoenix
By Charles R. Krull
Counsel for Appellant

STATE v. ZOTIKA
Decision of the Court

MEMORANDUM DECISION

Chief Judge Michael J. Brown delivered the decision of the Court, in which Judge Maurice Portley and Judge Peter B. Swann joined.

B R O W N, Chief Judge:

¶1 Patrick James Zotika was convicted of two counts of possession or use of dangerous drugs (Counts 1 and 6), class four felonies, two counts of possession or use of drug paraphernalia (Counts 2 and 4), class six felonies, one count of possession or use of marijuana (Count 3), a class six felony, and one count of possession or use of narcotic drugs (Count 5), a class four felony. The jury also found three aggravating factors. At sentencing, the trial court imposed presumptive ten-year concurrent terms of imprisonment on each count, to be served consecutive to Zotika's sentences resulting from his probation revocation in unrelated cases.

¶2 On appeal, Zotika argues that the trial court's imposition of ten-year terms of imprisonment for Counts 2, 3, and 4, all class six felonies, exceeds the maximum sentences permitted by law. The State confesses error, acknowledging that 3.75 years is the presumptive sentence, and 5.75 years is the maximum sentence for Counts 2, 3, and 4. A sentence that falls outside the statutory range is unlawful and therefore constitutes fundamental, prejudicial error. *See State v. Hargrave*, 225 Ariz. 1, 13, ¶ 40 (2010) (citing *State v. House*, 169 Ariz. 572, 573 (App. 1991)).

¶3 Because we accept the State's confession of error, we vacate the sentences imposed for Counts 2, 3, and 4, and remand for resentencing. We affirm the convictions on all six counts and the sentences imposed for Counts 1, 5, and 6.



Ruth A. Willingham · Clerk of the Court

FILED : ama