

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  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.*

THOMAS KING, *Appellant*.

No. 1 CA-CR 17-0094  
FILED 10-3-2017

---

Appeal from the Superior Court in La Paz County  
No. S1500CR201400259  
The Honorable Robert Carter Olson, Judge *Retired*

**AFFIRMED**

---

COUNSEL

Arizona Attorney General's Office, Phoenix  
By Joseph T. Maziarz  
*Counsel for Appellee*

Craig Williams, Attorney at Law PLLC, Prescott Valley  
By Craig Williams  
*Counsel for Appellant*

STATE v. KING  
Decision of the Court

---

**MEMORANDUM DECISION**

Judge Kent E. Cattani delivered the decision of the Court, in which Presiding Judge James P. Beene and Judge Randall M. Howe joined.

---

**CATTANI**, Judge:

¶1 Thomas King appeals his conviction and sentence for the sale of dangerous drugs. For reasons that follow, we affirm.

**FACTS AND PROCEDURAL BACKGROUND**

¶2 In October 2014, a confidential informant for the La Paz County Narcotics Task Force told officers that he could buy drugs from King. The informant called King to set up a sale, and officers drove him to King's house, where he bought a small amount of methamphetamine from King. The informant filmed the entire encounter on a hidden camera.

¶3 King was arrested and charged with two counts of sale of a dangerous drug, with Count 1 relating to an alleged sale in August 2014 and Count 2 relating to the October 2014 sale. The counts were severed for trial.

¶4 After a two-day trial, a jury convicted King of Count 2. The court later granted the State's motion to dismiss Count 1 without prejudice, and King was sentenced to a slightly mitigated term of six years' incarceration, flat time. King timely appealed, and we have jurisdiction under Arizona Revised Statutes ("A.R.S.") § 13-4033.<sup>1</sup>

**DISCUSSION**

**I. Juror Questions.**

¶5 King argues that the superior court failed to comply with Arizona Rule of Criminal Procedure 18.6(e) by failing to ask the jurors if they had any questions before each witness stepped down from the stand. Because King's counsel did not object to this procedure during trial, we review only for fundamental, prejudicial error. *See State v. Henderson*, 210

---

<sup>1</sup> Absent material revisions after the relevant date, we cite a statute's current version.

STATE v. KING  
Decision of the Court

Ariz. 561, 567, ¶¶ 19–20 (2005). Fundamental error is error going “to the foundation of the case,” taking away “a right essential to [the] defense,” and “of such magnitude that the defendant could not possibly have received a fair trial.” *Id.* at ¶ 19 (citation omitted). To show reversible error, a defendant must establish not only fundamental error, but also resulting prejudice. *Id.* at ¶ 20.

¶6 Rule 18.6(e) requires the court to instruct jurors “that they are permitted to submit to the court written questions directed to witnesses or to the court.” This instruction should inform jurors “that any questions directed to witnesses or the court must be in writing, unsigned and given to the bailiff,” and that “if a juror has a question for a witness . . . the juror should hand it to the bailiff during a recess, or if the witness is about to leave the witness stand, the juror should signal to the bailiff.” Ariz. R. Crim. P. 18.6(e) cmt. to 1995 amend.

¶7 Here, the superior court instructed the jurors about their opportunity to submit written questions for witnesses as part of the preliminary jury instructions:

If you have a question about the case for a witness or for me, write it down. Do not sign your name. Hand the question to the bailiff. If your question is for a witness who is about to leave the witness stand, please signal the bailiff or me before the witness leaves the stand.

Although the court did not thereafter ask the jurors whether they had questions for particular witnesses, a juror in fact submitted such a question regarding the video of the confidential informant’s encounter with King. The court discussed the question—why there were no pictures of the “dealer”—in an off-the-record conversation with counsel. The court did not ask the juror’s question, but the prosecutor shifted his line of questioning briefly so the confidential informant could explain various pictures captured from the video. This was the only juror question submitted during the trial.

¶8 King argues that the superior court’s failure to ask the jurors whether they had any questions during trial was inconsistent with the court’s obligations under Rule 18.6. But the plain language of Rule 18.6(e) requires only that the court instruct jurors that they may ask questions; the rule does not require that the court ask the jurors if they have questions during trial. Although the court may choose to ask jurors if they have questions, the court does not err by electing not to do so after having

STATE v. KING  
Decision of the Court

advised the jurors how to submit questions they might have for a witness or for the court.

**II. Sentencing.**

¶9 King's case was assigned to a new judge for sentencing. King argues that the sentencing court erred by failing to review the trial transcripts.

¶10 Despite being represented by counsel, King sent two letters to the sentencing judge after his trial. The second letter mentioned trial transcripts:

I am writing you this letter because my lawyer told me that you want me to sign this plea [as to Count 1] because you would like to save the state money on appeal.

Well I think I have a remedy for that, but since you was [sic] not the judge on this case you will have to read the transcripts of the case.

The letter then explained that the La Paz County Narcotics Task Force was no longer using the confidential informant who testified against him, and that the department's policies regarding confidential informants had changed. The letter did not detail a proposed remedy, but indicated that King would be making a motion at sentencing. At sentencing, however, King did not make any such motion.

¶11 King argues that his letter functioned as an objection, and that the issue was thus preserved for appeal. But—even setting aside that the letter seems to request that the court review the transcripts in connection with the plea offer in Count 1, not sentencing in Count 2—King was represented by counsel at the time he sent the letter, so the court was not required to consider or respond to it. *See State v. Carlson*, 237 Ariz. 381, 398, ¶ 63 (2015). King's counsel did not object to the sentencing court's alleged failure to read the trial transcripts and did not request that the court review any specific transcript. Accordingly, the issue was not preserved for appeal, and we review only for fundamental, prejudicial error. *Henderson*, 210 Ariz. at 567, ¶¶ 19–20.

¶12 A sentencing court “must adequately investigate the facts necessary to intelligently exercise [its] sentencing power.” *State v. Renner*, 177 Ariz. 395, 398 (App. 1993). The court does not commit fundamental error when it fails to consider all materials that the defendant subsequently

STATE v. KING  
Decision of the Court

thinks may have been relevant to the sentencing decision, including transcripts of prior proceedings. *Id.*

¶13 Here, the sentencing court noted on the record that it had “reviewed the file as well as the presentence report.” Defense counsel was not precluded from highlighting for the court any portion of the transcripts germane to the sentencing decision, and the court reviewed sufficient information to render a decision. King’s six-year sentence falls within the range prescribed by law, and is significantly shorter than the presumptive sentence of ten years. *See* A.R.S. § 13-3407(E). King has not shown fundamental, prejudicial error.

CONCLUSION

¶14 King’s conviction and sentence are affirmed.



AMY M. WOOD • Clerk of the Court  
FILED: AA