

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

WILLIE RANDLE, *Appellant*.

No. 1 CA-CR 17-0524
FILED 8-21-2018

Appeal from the Superior Court in Maricopa County
No. CR2016-149102-001
The Honorable Ronda R. Fisk, Judge

AFFIRMED

COUNSEL

Arizona Attorney General's Office, Phoenix
By Nicholas Chapman-Hushek
Counsel for Appellee

The Heath Law Firm, PLLC, Mesa
By Mark Heath
Counsel for Appellant

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MEMORANDUM DECISION

Presiding Judge Kent E. Cattani delivered the decision of the Court, in which Judge Kenton D. Jones and Judge Jon W. Thompson joined.

CATTANI, Judge:

¶1 Willie Randle appeals his sentences for burglary and possession of dangerous drugs. For reasons that follow, we affirm.

FACTS AND PROCEDURAL BACKGROUND

¶2 A jury found Randle guilty of burglary and possession of a dangerous drug. At sentencing, the State submitted a certified copy of the automated summary report from the Arizona Department of Corrections (the "Report"), which showed that Randle had three historical prior felony convictions. The Report identified Randle by his name, date of birth, sex, and race, and included a certified copy of his fingerprints and a headshot photograph. Based on the Report, the superior court concluded that Randle was a category three repetitive offender under Arizona Revised Statutes ("A.R.S.") § 13-703(C), and sentenced him to concurrent, presumptive terms of 10 years' imprisonment.

¶3 Randle timely appealed, and we have jurisdiction under A.R.S. § 13-4033(A)(4).

DISCUSSION

¶4 Randle argues that the superior court erred by attributing to him the three historical prior felony convictions on the Report and sentencing him as a category three repetitive offender. Because Randle did not raise this issue with the superior court, we review only for fundamental, prejudicial error. *See State v. Henderson*, 210 Ariz. 561, 567-68, ¶¶ 19-20 (2005). Imposition of an illegal sentence constitutes fundamental error. *State v. Thues*, 203 Ariz. 339, 340, ¶ 4 (App. 2002).

¶5 Before a defendant can be sentenced as a category three repetitive offender, the State must present clear and convincing evidence that the defendant has two or more historical prior felony convictions. *See* A.R.S. § 13-703(C); *State v. Cons*, 208 Ariz. 409, 415, ¶ 15 (App. 2004). To do so, the State must show the existence of the convictions and "positive

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identification establishing that the accused is the same person who previously was convicted.” *Cons*, 208 Ariz. at 415, ¶ 16.

¶6 Randle does not dispute that the Report details prior convictions, and he does not dispute that the alleged convictions qualify as historical prior felony convictions. He argues only that the State did not sufficiently establish that he is the person who was previously convicted because the State did not provide expert testimony linking him to the Report.

¶7 The State may prove a prior conviction by submitting into evidence a certified copy of the prior conviction and establishing that the document refers to the defendant. *State v. Carreon*, 210 Ariz. 54, 65, ¶ 53 (2005); *State v. Hauss*, 140 Ariz. 230, 231 (1984). Although it is not sufficient to show that the accused has the same name as the individual with the prior convictions, *State v. Terrell*, 156 Ariz. 499, 503 (App. 1988), *superseded by statute on other grounds as recognized in Cons*, 208 Ariz. at 413, ¶ 9, the name accompanied by a detailed physical description of the defendant may be sufficient. *Carreon*, 210 Ariz. at 65, ¶ 54 & n.12.

¶8 Here, the State offered a certified copy of the Report. The Report listed Randle’s name, birthdate, sex, and race, and a headshot photograph. Accordingly, the State presented adequate evidence from which to conclude that Randle was the person previously convicted of the offenses listed in the Report.

¶9 Furthermore, Randle implicitly acknowledged the convictions during a discussion with his counsel and the court:

[Randle]: [Y]ou said the dangerous drug that was . . . non-dangerous but repetitive. How was it repetitive when this like was the first time I ever been caught with drugs and so how –

[Defense counsel]: The repetitive nature is because you have prior felonies.

[Randle]: Oh, but I – they don’t have to be the same thing?

[Defense counsel]: Correct.

The Court: Correct.

[Randle]: Oh, okay. I thought it had to be the same like charge to be repetitive.

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Thus, the superior court did not err by finding that Randle was a repetitive offender under A.R.S. § 13-703(C).

CONCLUSION

¶10 Randle's sentences are affirmed.



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