

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

JAIME VILLA, *Appellant*.

No. 1 CA-CR 18-0895
FILED 1-28-2020

Appeal from the Superior Court in Maricopa County
No. CR2015-005364-001
The Honorable David O. Cunanan, Judge

AFFIRMED

COUNSEL

Arizona Attorney General's Office, Phoenix
By Linley Wilson
Counsel for Appellee

Maricopa County Public Defender's Office, Phoenix
By Cory Engle
Counsel for Appellant

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MEMORANDUM DECISION

Acting Presiding Judge David D. Weinzweig delivered the decision of the Court, in which Chief Judge Peter B. Swann and Judge Joshua D. Rogers¹ joined.

WEINZWEIG, Judge:

¶1 Jaime Villa (“Villa”) appeals his convictions and sentences for two counts of attempted murder, four counts of aggravated assault and unlawful flight from a law enforcement vehicle. We affirm.

FACTS AND PROCEDURAL BACKGROUND

¶2 After robbing a Chandler bank, Villa led police on a high-speed car chase, spanning roughly 25 miles of highways and residential areas in Chandler, Tempe and Phoenix, while aiming his revolver at random civilians, including a nine-year-old child, and twice firing at pursuing officers. Villa abandoned his car near Mill Avenue in Tempe and ran to a movie theater, where he was arrested in the ticket line.

¶3 The State charged Villa with two counts of attempted first-degree murder, a class two felony; seven counts of aggravated assault, a class two felony; endangerment, a class six felony; and unlawful flight from a law enforcement vehicle, a class five felony. A jury then found him guilty of two counts of attempted murder, four counts of aggravated assault and unlawful flight.

¶4 At the sentencing hearing, the superior court found that Villa had five felony convictions in federal court for prior armed bank robberies. The court sentenced Villa as a dangerous offender under A.R.S. § 13-704(E) to a presumptive 28-year sentence for two counts of attempted murder; as a serious, violent or aggravated offender under A.R.S. § 13-706(A) to a presumptive life sentence with the possibility of release on four counts of

¹ The Honorable Joshua D. Rogers, Judge of the Arizona Superior Court, has been authorized to sit in this matter pursuant to Article 4, Section 3 of the Arizona Constitution.

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aggravated assault; and as a repetitive offender under A.R.S. § 13-703(C) to a presumptive five-year sentence for unlawful flight.

¶5 Villa timely appealed. We have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution, and A.R.S. §§ 12-120.21(A)(1), 13-4031, and -4033(A).

DISCUSSION

¶6 Villa argues that the superior court violated his Sixth Amendment right to a jury trial when it enhanced his sentence under Arizona sentencing statutes based on prior felony convictions. *See* A.R.S. §§ 13-703(C), -704(E), and -706(A). Villa concedes, however, that the U.S. Supreme Court and Arizona Supreme Court have rejected his argument, recognizing that the Sixth Amendment is not violated where judges consider prior convictions to enhance a penalty beyond that authorized by the jury's verdict. *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000) ("Other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt."); *State v. Ring*, 204 Ariz. 534, 557, ¶ 60 (2003) ("[P]ermitting a judge to decide the 'fact' of a prior conviction does not raise Sixth Amendment concerns; those convictions are themselves products of Sixth Amendment—compliant proceedings.").

¶7 Even so, Villa argues that "the exception for prior convictions" in these cases "has been eroded by subsequent cases, was wrongly decided when issued, and should also be overruled." But Villa has not shown that *Apprendi* and *Ring* have been overruled, and we are bound by the decisions. *Ring*, 204 Ariz. at 557, ¶ 61 ("We cannot ignore a Supreme Court decision interpreting federal law unless the Court expressly overrules or casts cognizable doubt on that decision."); *State v. McPherson*, 228 Ariz. 557, 562, ¶ 13 (App. 2012) (citation omitted) ("This court is bound by decisions of the Arizona Supreme Court[.]").

¶8 Villa also contends he should have been sentenced on the attempted murder counts under A.R.S. § 13-704(F), but that subsection only applies when a defendant is currently charged with dangerous offenses "that were not committed on the same occasion but that are consolidated for trial purposes." The court properly sentenced Villa under A.R.S. § 13-704(E), which concerns historical prior convictions.

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CONCLUSION

¶9 We affirm the convictions and sentences, but modify the November 30, 2018 sentencing order to reflect the superior court's oral pronouncement that Villa (1) was sentenced on count 6 for aggravated assault as a serious and repetitive offender under A.R.S. § 13-706(A), not a dangerous and repetitive offender under A.R.S. § 13-704(A); and (2) was credited for 1,138 days served on all counts.



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