

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  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

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STATE OF ARIZONA, *Appellee*,

*v.*

NATHAN MARICE WEST, *Appellant*.

No. 1 CA-CR 22-0082  
FILED 1-10-2023

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Appeal from the Superior Court in Maricopa County  
No. CR2020-121552-001  
The Honorable Ronee Korbin Steiner, Judge

**AFFIRMED**

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COUNSEL

Arizona Attorney General's Office, Tucson  
By Amy Thorson  
*Counsel for Appellee*

Maricopa County Public Defender's Office, Phoenix  
By Kevin D. Heade  
*Counsel for Appellant*

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**MEMORANDUM DECISION**

Judge Peter B. Swann<sup>1</sup> delivered the decision of the court, in which Presiding Judge Maria Elena Cruz and Judge Angela K. Paton joined.

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**S W A N N**, Judge:

¶1 Nathan Marice West appeals his conviction and sentence for aggravated driving or actual physical control while under the influence of intoxicating liquor (“DUI”). We affirm.

**FACTS AND PROCEDURAL HISTORY**

¶2 After the state charged West with two counts of aggravated DUI, the superior court conducted two unsuccessful settlement conferences over the course of three days. The matter was assigned to a different judge to preside over trial. At the trial management conference two days before trial, the assigned judge inquired about the status of settlement discussions.

¶3 Trial commenced on October 14, 2021, and the jury found West guilty as charged. Based on West’s criminal history and the jury’s finding that he was on felony release when he committed the offenses, the trial court imposed presumptive concurrent twelve-year prison terms. West timely appeals.

**DISCUSSION**

¶4 West argues that the trial judge erred by “initiat[ing] settlement discussions” two days before trial without obtaining the parties’ consent to do so as required by Arizona Rule of Criminal Procedure (“Rule”) 17.4(a)(2). Because he did not consent to the judge’s participation in the “settlement discussions,” West contends his sentence was the result

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<sup>1</sup> Judge Peter B. Swann was a sitting member of this court when the matter was assigned to this panel of the court. He retired effective November 28, 2022. In accordance with the authority granted by Article 6, Section 3, of the Arizona Constitution and pursuant to A.R.S. § 12-145, the Chief Justice of the Arizona Supreme Court has designated Judge Swann as a judge *pro tempore* in the Court of Appeals for the purpose of participating in the resolution of cases assigned to this panel during his term in office and for the duration of Administrative Order 2022-162.

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of “judicial vindictiveness” and should be vacated. West properly concedes he did not raise this issue in the superior court, meaning he bears the burden on appeal of establishing fundamental, prejudicial error. *See State v. Emedi*, 251 Ariz. 78, 81, ¶ 8 (App. 2021).

¶5 Rule 17.4 provides, in relevant part:

At either party’s request or on its own, a court may order counsel with settlement authority to participate in good faith *discussions to resolve the case* in a manner that serves the interests of justice. *The assigned trial judge may participate in this discussion only if the parties consent.* In all other cases, the discussion must be before another judge.

(Emphasis added.)

¶6 A judge who participates in a discussion “to resolve the case” and subsequently presides over trial without the parties’ consent violates Rule 17.4. *See State v. Simon*, 229 Ariz. 60, 62, ¶ 7 (App. 2012) (applying principles of statutory construction when interpreting rules of procedure by looking to the plain language of the rule as the best and most reliable index of its meaning).

¶7 Here, the record reflects that the parties did not consent to the trial judge’s participation in such a discussion. The issue, therefore, is whether the court’s discussion with the parties two days before West’s trial was an attempt to “resolve the case.” We conclude it was not.

¶8 At the October 12, 2021, trial management conference, the assigned trial judge and the parties discussed the trial procedures that would be employed to mitigate the risks associated with the ongoing COVID-19 pandemic. At the beginning of the conference, the following discussion ensued, in relevant part:

THE COURT: This is the time set for trial procedure conference. Obviously, this is my first time interacting with you all -- all relative to this case, and you, completely. And so I always like to -- I understand we’re at a place where we’re about to -- you’re about to pick a jury and everything, but I always go to the topic of settlement. I always go to the topic of settlement. I realize it may be past the point of no return, and that’s perfectly fine. But I always think it’s wise to raise the issue. We have jury panels ready to go on Thursday morning, and so I guess my first question is whether or

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not . . . an offer is even available at this point on the cases, and then if so, whether there's any willingness by the Defendant to discuss that at this point?

[THE PROSECUTOR]: Thank you, Judge. If the Defendant were willing to take the pleas, the State would be willing to re-offer them at this point.

THE COURT: All right. And, Mr. West, I realize I haven't met you, and I don't know very much about your cases, so I'm not going to pretend that I do. And I say I don't know much. I have reviewed everything relative to this first trial that would go, the aggravated DUI.

...

I don't know the basis for rejecting the offer in the past, and we don't have to talk about anything in detail. I just want you to know that we have panels ready to go on Thursday.

And so I just think that it's wise for me as a judge, especially because it means three trials, three juries, courtrooms being taken up, you know, by -- by your trials, which is perfectly fine, you have every right to have that happen if that's what you should choose, but I just think it -- it makes sense for me to broach that to you at least one more time and say, you know, is this really what you want to do at this point? You're -- you're looking at a lot of exposure, which based on my understanding of the facts in -- and your history. So you don't have to answer me directly, you can talk with your Counsel. I just wanted to raise that.

THE DEFENDANT: . . . I'm not going to sign on -- on -- on something that's -- no. I'm not going to make myself out to be something that I'm not. . . . And then what they want me to sign, five to seven, and that's just -- I don't want to have that on my record . . . [.]

THE COURT: Okay. Again, and -- and I -- we're not going to spend any more time talking about it if that's your position. I respect that. That's your choice 100 percent. Five to seven years of anybody's life is a long time. I can't imagine being in a situation to have to make that decision for myself.

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That being said, if you're convicted of one or multiple cases, you're looking at a long range of time, just based on what I understand your history to be. So that's something that you should be thinking about. I guess signing up for that isn't a fun option. But what you're facing if you go to trial and you're convicted is substantially more. That -- that's really the point of comparison.

THE DEFENDANT: Right. It -- I mean, I got to go. If that's -  
...

THE COURT: Is it the -- is it the plea, or is it the amount of time? Because I'm not sure I'm understanding.

THE DEFENDANT: It's the plea, it's the time --

THE COURT: Okay.

THE DEFENDANT: -- and -- and it's the charges.

THE COURT: Okay. All right. So it's everything. All right. Well, let's move on. Thank you for having that conversation with me. I appreciate you indulging me on that.

¶9 The foregoing shows that the court merely verified that West intended to reject the state's plea offer and proceed to trial knowing that, should trial go forward, he would face a harsher sentence. Nothing in the record indicates that, had West indicated an interest in pursuing a negotiated settlement instead of trial, the judge would have participated in that discussion and then presided over trial without the parties' consent to do so in violation of Rule 17.4. Accordingly, West fails to establish error, let alone fundamental error. *See State v. Escalante*, 245 Ariz. 135, 142, ¶ 21 (2018) (“[T]he first step in fundamental error review is determining whether trial error exists.”).

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**CONCLUSION**

¶10 We affirm West's convictions and sentences.



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