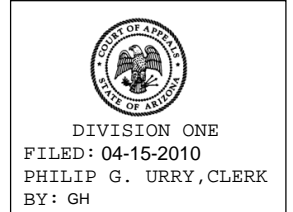


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.34

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



STATE OF ARIZONA,) No. 1 CA-CR 09-0429
)
Appellee,) DEPARTMENT S
)
v.) **MEMORANDUM DECISION**
)
BRYANT MATTHEW WILKERSON,) (Not for Publication -
) Rule 111, Rules of the
Appellant.) Arizona Supreme Court)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2007-128986-001 SE

The Honorable Teresa Sanders, Judge

CONVICTION AFFIRMED; SENTENCE AFFIRMED AS MODIFIED

Terry Goddard, Attorney General Phoenix
By Kent E. Cattani, Chief Counsel
Criminal Appeals/Capital Litigation Section
and Joseph T. Maziarz, Assistant Attorney General
Attorneys for Appellee

James J. Haas, Maricopa County Public Defender Phoenix
By Thomas Baird, Deputy Public Defender
Attorneys for Appellant

T I M M E R, Chief Judge

¶1 Bryant Matthew Wilkerson appeals the trial court's order sentencing him for leaving the scene of a fatal injury accident. Wilkerson asks this court to "exercise its authority to correct the sentencing order" to reflect that the trial court expressly intended to designate the conviction as a class four felony, as stated orally at the time of pronouncement of sentence. The State confesses such error, and we agree.

¶2 Wilkerson was charged with multiple offenses resulting from a fatal automobile accident on May 5, 2007, one of which was count three, leaving the scene of a fatal injury accident, a class three felony. A twelve-day jury trial subsequently ensued. After the close of evidence, the trial court instructed the jury as to all charges. With respect to count three, the trial court instructed the jury that leaving the scene of a fatal accident required proof that:

A. The defendant was the driver of a vehicle involved in an accident resulting in the death of another person.

B. The defendant failed to immediately stop at the scene of the accident, or as close to the accident scene as possible, and return to the accident scene.

C. The defendant knew the accident caused injury to another, or possessed knowledge which would lead to a reasonable anticipation that injury had occurred.

¶3 After deliberation, the jury acquitted Wilkerson on all counts except count three, leaving the scene of a fatal

injury accident. The jury specifically found that Wilkerson did not cause the accident.

¶14 At sentencing on May 15, the trial court stated, "[I]t's the judgment of the court that you are guilty of count three, leaving the scene of a fatal injury accident. That's a class four felony." The conviction is designated as a class three felony on the sentencing document, however.

¶15 Arizona Revised Statutes section 28-661(B) (2004)¹ states, in pertinent part, that if a person "is involved in an accident resulting in death . . . and who fails to stop or to comply with the requirement of § 28-663 is guilty of a class 4 felony, except that if a driver caused the accident the driver is guilty of a class 3 felony."

¶16 Upon finding a discrepancy between an oral pronouncement at a sentencing hearing and a minute entry or order of confinement, we must determine the trial court's intent through a review of the record. *State v. Stevens*, 173 Ariz. 494, 496, 844 P.2d 661, 663 (App. 1992). The sentencing hearing transcript shows the court intended to designate the conviction as a class four felony, "[b]ased upon prior proceedings in this court, [and] in particular the jury's verdict in this court."

¹ We cite to the older version of § 28-661(B) since the offense in this case occurred on May 5, 2007. See Laws 2007, Ch. 154, § 1, eff. Sept. 19, 2007).

¶7 With this modification, we affirm Wilkerson's conviction and sentence.

/s/
Ann A. Scott Timmer, Chief Judge

CONCURRING:

/s/
John C. Gemmill, Judge

/s/
Philip Hall, Judge