

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



DIVISION ONE  
FILED: 02/08/2011  
RUTH WILLINGHAM,  
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IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

STATE OF ARIZONA, ) No. 1 CA-CR 10-0331  
 )  
Appellee, ) DEPARTMENT S  
 )  
v. ) **MEMORANDUM DECISION**  
 )  
BOBBY VEODIS HENDRIX, JR., ) (Not for Publication -  
 ) Rule 111, Rules of the  
Appellant. ) Arizona Supreme Court)  
 )

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Appeal from the Superior Court in Maricopa County

Cause No. CR 2009-119508-002 DT

The Honorable Paul J. McMurdie, Judge

**AFFIRMED AS MODIFIED**

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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 Louise Stark, Deputy Public Defender  
Attorneys for Appellant

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**T I M M E R**, Chief Judge

¶1 Bobby Veodis Hendrix, Jr., appeals his sentences imposed after a jury convicted him of theft, a class five felony (count one) and burglary in the second degree, a class three felony (count two). Hendrix argues the court erred by (1) misstating the sentences for his convictions and (2) imposing the wrong sentence for theft. The State confesses error, and for the reasons that follow, we agree.

¶2 After the jury rendered its verdict, the State agreed to waive presentation of an aggravating circumstance in exchange for Hendrix's admission to being on probation at the time of the offenses and having one historical prior felony conviction. The court then explained the sentencing ranges to Hendrix, in relevant part, as follows:

THE COURT: With a historical prior conviction, your sentencing range for the Class 3 offense [burglary] goes from 3 and a third years all of the way up to 16.25 years.

And for the Class 5 offense [theft], it goes from 1 year all of the way up to 3.75 years.

With the allegation that you were on probation at the time, you have to be sentenced to no less than the presumptive sentence, and the presumptive sentence for the Class 3 offense is 6 and a half years. The presumptive sentence for the Class 5 offense is 2.25 years.

¶3 At sentencing the next month, the court found the presumptive sentences appropriate for each conviction. The

court then sentenced Hendrix to concurrent "presumptive" terms of 6.5 years' imprisonment for the theft conviction and 2.5 years' imprisonment for the burglary conviction. The sentencing minute entry corresponds with the oral pronouncement of sentence. As the court correctly noted at the conclusion of the trial the previous month, however, the presumptive sentence for theft with one prior felony conviction is 2.25 years and the presumptive sentence for burglary with one prior felony conviction is 6.5 years. Ariz. Rev. Stat. § 13-703(B)(2), (I) (Supp. 2009). The court mixed the sentences for the convictions and misstated the sentence for theft.

¶4 Based on the record, the trial court clearly stated its intent to sentence Hendrix to presumptive terms of imprisonment. See *State v. Stevens*, 173 Ariz. 494, 496, 844 P.2d 661, 663 (App. 1992). Remand for clarification is unnecessary. *State v. Contreras*, 180 Ariz. 450, 453 n.2, 885 P.2d 138, 141 (App. 1994). We therefore correct the sentencing minute entry to reflect that Hendrix was sentenced to the presumptive term of 2.25 years' imprisonment for count one (theft) and the presumptive term of 6.5 years' imprisonment for count two (burglary in the second degree), to be served concurrently with each other but consecutive to the sentences imposed in Maricopa County Cause Numbers CR2006-123116-001 and

CR2008-005907-001. With this modification, we affirm Hendrix's convictions and sentences.

/s/  
Ann A. Scott Timmer, Chief Judge

CONCURRING:

/s/  
Philip Hall, Judge

/s/  
Patrick Irvine, Judge