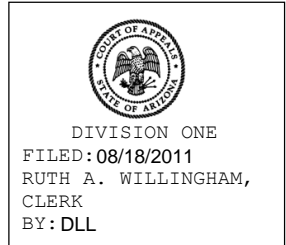


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED  
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24



IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

STATE OF ARIZONA, ) No. 1 CA-CR 10-0666  
) 1 CA-CR 10-0669  
Appellee, ) (Consolidated)  
)  
v. ) DEPARTMENT B  
)  
MARK ANTHONY MORRIS, ) **MEMORANDUM DECISION**  
) (Not for Publication -  
Appellant. ) Rule 111, Rules of the  
) Arizona Supreme Court)  
)  
\_\_\_\_\_ )

Appeal from the Superior Court in Maricopa County

Cause Nos. CR2006-166112-001 SE, CR2008-111440-001 DT  
(Consolidated)

The Honorable Maria del Mar Verdin, Judge

**AFFIRMED**

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Thomas C. Horne, Arizona Attorney General Phoenix  
By Kent E. Cattani, Chief Counsel  
Criminal Appeals/Capital Litigation Section  
And Melissa M. Swearingen, Assistant Attorney General  
Attorneys for Appellee

James J. Haas, Maricopa County Public Defender Phoenix  
By Terry J. Adams, Deputy Public Defender  
Attorneys for Appellant

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**B R O W N**, Judge

¶1 Mark Anthony Morris appeals from his convictions and sentences for conviction of misconduct involving weapons and possession of methamphetamine. He challenges only the sentences imposed, asserting that the trial court erred in determining that he had two prior historical felony convictions. For the following reasons, we affirm.

#### **BACKGROUND**

¶2 In October of 2006, Morris was stopped by a police officer in Phoenix. The officer discovered that Morris was driving with a suspended license and placed him under arrest. During a subsequent search of the vehicle, a gun was discovered as well as pills later found to contain methamphetamine.

¶3 Morris was charged with misconduct involving weapons and possession of methamphetamine, both class 4 felonies, in separate indictments that were later consolidated for trial. The State alleged numerous historical prior offenses, as well as the potential use of future convictions on pending charges. The State later dismissed some of the pending charges and re-charged them with other offenses in a new case.

¶4 At trial, Morris testified and admitted two felony convictions in 1992, and a federal weapons conviction. The jury found Morris guilty of both charges, and also found the aggravating factor that Morris had previously served time in prison.

¶15 At sentencing, Morris did not argue that his admitted priors failed to qualify for enhancement, except to ask whether the federal conviction could be used. The State asserted generally that the federal statute mirrored the Arizona statute and would qualify as a prior for sentencing, but did not provide any specific authority to compare the elements of the offenses. Likewise, the court did not engage in any specific analysis or finding on the matter.

¶16 Morris was sentenced to presumptive terms of 10 years for each conviction, to be served concurrently with a 13.5 year aggravated term in a different cause number.<sup>1</sup> The record does not contain any specific findings that the trial court relied on historical prior felony convictions in imposing the 10-year sentence, but the court must have done so to be able to categorize the sentences as "presumptive." See Ariz. Rev. Stat. ("A.R.S.") § 13-703 (2010).<sup>2</sup> This timely appeal followed.

#### DISCUSSION

¶17 Morris argues that his prior convictions were insufficient to serve as historical prior convictions for

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<sup>1</sup> Morris was sentenced for four different cause numbers at the sentencing hearing, each of which included various counts. The cause numbers were: CR 2003-038528, CR 2006-166112, CR 2008-111440, and CR 2009-006265. Morris had previously entered a plea agreement in the 2003 and 2009 matters.

<sup>2</sup> Though the criminal sentencing statutes were renumbered after the date of Morris's offenses, absent material revisions, we cite the current version of the statute.

sentence enhancement purposes. He argues that two of the convictions were too remote in time and that the State failed to show that the federal felony conviction would be punishable as a felony in the state of Arizona. Morris did not raise this argument or otherwise object at sentencing; thus, we review only for fundamental error. *State v. Henderson*, 210 Ariz. 561, 567, ¶ 19, 115 P.3d 601, 607 (2005). To prevail under this standard of review, a defendant must establish that: (1) error occurred; (2) the error is fundamental; and (3) the error caused the defendant prejudice. *Id.* at 568, ¶¶ 23-26, 115 P.3d at 608.

¶8 "Historical prior felony conviction" is defined by statute. A.R.S. § 13-105(22) (2010). Certain types of convictions remain historical prior convictions regardless of their remoteness in time from the present offense. A.R.S. § 13-105(22)(a). We agree with the State's argument that because one of Morris's admitted prior convictions was for a 1992 aggravated assault with serious physical injury, it serves as a historical prior conviction, regardless of its remoteness. A.R.S. § 13-105(22)(a)(ii); *State v. Christian*, 205 Ariz. 64, 66-67, ¶ 7, 66 P.3d 1241, 1243-44 (2003) (citing an earlier version of the statute that has now been renumbered to the current version).

¶9 As to the 1992 conviction for attempted possession of narcotic drugs, a class 3 felony, it also qualifies as a historical prior felony conviction under the statute. A.R.S.

§ 13-105(22)(b). Both parties agree that the time Morris spent incarcerated on different charges is excludable and that the relevant time between offenses is less than ten years. Because the 1992 conviction for attempted possession of narcotic drugs was a class 3 felony, it is a historical prior felony conviction if it occurred within ten years of the present offense, not the five years that Morris argues. A.R.S. § 13-105(22)(b) (A historical prior consists of "[a]ny class 2 or 3 felony . . . that was committed within the ten years immediately preceding the date of the present offense"). Therefore, it also serves as a historical prior for sentencing purposes.

¶10 Finally, as to the federal weapons conviction, the applicable statute provides that Morris could have been sentenced as a category three repetitive offender with two or more historical priors, so the trial court was not required to decide whether the federal prior should apply. A.R.S. § 13-703(C). Therefore, we find no sentencing error.

**CONCLUSION**

¶11 For the foregoing reasons, we affirm Morris's convictions and sentences.

/s/

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MICHAEL J. BROWN, Judge

CONCURRING:

/s/

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LAWRENCE F. WINTHROP, Presiding Judge

/s/

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PETER B. SWANN, Judge