IN THE
# ARIZONA COURT OF APPEALS
DIVISION TWO

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THE STATE OF ARIZONA,
*Appellee*,

*v.*

ISAAC WINSTON JAMES,
*Appellant*.

No. 2 CA-CR 2019-0301
Filed January 21, 2021

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THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
*See* Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.19(e).

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Appeal from the Superior Court in Pinal County
No. S1100CR201702161
The Honorable Christopher J. O'Neil, Judge

**AFFIRMED**

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COUNSEL

Mark Brnovich, Arizona Attorney General
Linley Wilson, Deputy Solicitor General/Section Chief of Criminal Appeals
By Alexander M. Taber, Assistant Attorney General, Tucson
*Counsel for Appellee*

Michael Villarreal, Florence
*Counsel for Appellant*

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**MEMORANDUM DECISION**

Presiding Judge Espinosa authored the decision of the Court, in which Vice Chief Judge Staring and Judge Eckerstrom concurred.

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E S P I N O S A, Presiding Judge:

**¶1** After a jury trial, Isaac James was convicted of leaving the scene of an accident and reckless driving.[1] James admitted having three prior felony convictions, and the trial court sentenced him to an enhanced, mitigated prison term of three years for leaving the scene and to time served for reckless driving.

**¶2** On appeal, counsel filed a brief in compliance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297 (1969), stating he had reviewed the record and found no "arguable issues" to raise. Consistent with *State v. Clark*, 196 Ariz. 530, ¶ 30 (App. 1999), counsel provided "a detailed factual and procedural history of the case, with citations to the record," and asked us to search the record for reversible error. When conducting our review pursuant to *Anders*, we identified as a non-frivolous claim whether the trial court had engaged James in a sufficient colloquy regarding his three prior felony convictions before he admitted them. We thus ordered the parties to file supplemental briefs addressing this issue.

**¶3** Viewed in the light most favorable to affirming the jury's verdicts, *see State v. Tamplin*, 195 Ariz. 246, ¶ 2 (App. 1999), the evidence is sufficient here, *see* A.R.S. §§ 28-661(A), 28-663(A), 28-693(A). In July 2017, James was driving a vehicle and hit N.O., who was walking in a store parking lot. Although James initially stopped and tried to help N.O., he left within a minute or two without providing N.O. his name, address, or license plate number. As a result of the accident, N.O. had a sore back, a bruised elbow, and a cut finger.

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[1]James was also indicted for driving on a suspended license, but the trial court granted the state's motion to dismiss that count.

**¶4** At a hearing after the trial, James indicated he wished to admit three prior felony convictions. The trial court engaged in a colloquy with James, confirming that no one had threatened him or made any promises related to the admission, that he was making the decision of his own free will, and that he was not impaired by drugs or alcohol. James also stated that he understood the state had the burden of proving his priors, that he had spoken to his attorney, and that his attorney had explained everything to his satisfaction. The prosecutor then identified the three priors, when they were committed, and when James had been convicted. After James acknowledged committing those offenses, the court accepted the admission, making James a category-three repetitive offender and sentencing him as such.

**¶5** In his supplemental brief, James maintains the trial court "failed to adequately inquire and ascertain that [his] stipulation to having three prior felony convictions was entered knowingly, voluntarily and willingly" because it "did not inquire as to whether [he] was aware that the sentencing range would be lower if he did not stipulate to his prior history and/or if the State was unable to prove the existence of the prior felony convictions." In addition, James argues the court "failed to inquire if [his] mental health caused him to fail to understand the effect the stipulation would have on the sentencing options available." In response, the state concedes the court "did not conduct a full colloquy with James regarding the admission of his prior felony convictions." However, the state contends that a remand for resentencing is unnecessary because James failed to demonstrate any resulting prejudice.

**¶6** Rule 17.6, Ariz. R. Crim. P., provides that the trial court "may accept the defendant's admission to an allegation of a prior conviction only under the procedures of this rule." It therefore "establishes a colloquy requirement prior to the court accepting a defendant's admission of a prior conviction." *State v. Young*, 230 Ariz. 265, ¶ 8 (App. 2012). During the colloquy, the court "must advise the defendant of the nature of the allegation, the effect of admitting the allegation on the defendant's sentence, and the defendant's right to proceed to trial and require the State to prove the allegation." *State v. Anderson*, 199 Ariz. 187, ¶ 36 (App. 2000); *see also* Ariz. R. Crim. P. 17.2(a).[2] The purpose is "to ensure that a defendant voluntarily and intelligently waives the right to a trial on the issue of the

[2]Rule 17.2 specifically address pleas of guilty and no contest, and it is thus worded differently in terms of the requirements of the colloquy.

prior conviction." *State v. Morales*, 215 Ariz. 59, ¶ 11 (2007); *see also* Ariz. R. Crim. P. 17.3(a).

**¶7** "An inadequate colloquy does not automatically invoke resentencing of the defendant." *Young*, 230 Ariz. 265, ¶ 11. The defendant "bears the burden of persuasion in showing that the error caused him prejudice," meaning that "he 'would not have admitted the fact of the prior conviction had the colloquy been given.'" *Id.* (quoting *Morales*, 215 Ariz. 59, ¶¶ 10-11); *see also Young*, 230 Ariz. 265, ¶ 11 ("[T]he defendant must, at the very least, assert on appeal that he would not have admitted the prior felony convictions had a different colloquy taken place.").

**¶8** In this case, at a minimum, the trial court did not inform James of the "effect of admitting the allegation on [his] sentence," specifically, that the existence of three priors exposed him to an increased sentencing range or what that range was in comparison to being convicted without the priors. *Anderson*, 199 Ariz. 187, ¶ 36. The colloquy was therefore insufficient to ensure that James's admission was voluntarily and intelligently made. *See Morales*, 215 Ariz. 59, ¶ 11.

**¶9** However, James has failed to make a showing of prejudice. He does not argue that he would not have admitted the three prior felony convictions had there been a proper colloquy. *See Young*, 230 Ariz. 265, ¶ 11. In addition, James "does not suggest that he was not convicted of the felonies at issue or that the state would have been unable to produce the needed documentary evidence of his prior convictions if he had refused to stipulate."[3] *Id.* We therefore need not remand for resentencing. *See id.* And the sentences imposed are within the statutory ranges. *See* A.R.S. §§ 13-703(C), (J), 13-707(A)(2), 28-661(C), 28-693(B).

**¶10** Pursuant to our obligation under *Anders*, we have searched the record for reversible error and have found none. Accordingly, James's convictions and sentences are affirmed.

[3] Where evidence in the record conclusively proves a prior conviction, remanding for resentencing is also unnecessary, despite an insufficient colloquy. *Morales*, 215 Ariz. 59, ¶ 13. The record in this case contains a criminal history report, but the report does not detail all three felony convictions that James admitted.