

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

STATE OF ARIZONA, *Respondent*,

v.

ANTONIO CASTILLO, JR., *Petitioner*.

No. 1 CA-CR 14-0605 PRPC
FILED 11-3-2016

Petition for Review from the Superior Court in Maricopa County
No. CR2012-164395-001
The Honorable Jeanne M. Garcia, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Maricopa County Attorney's Office, Phoenix
By E. Catherine Leisch
Counsel for Respondent

Antonio Castillo, Jr., San Luis
Petitioner

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MEMORANDUM DECISION

Presiding Judge Kent E. Cattani delivered the decision of the Court, in which Judge Lawrence F. Winthrop and Chief Judge Michael J. Brown joined.

CATTANI, Judge:

¶1 Antonio Castillo, Jr., petitions for review of the superior court's summary dismissal of his petition for post-conviction relief. For reasons that follow, we grant review and deny relief.

¶2 Castillo was charged with shoplifting, aggravated assault, and resisting arrest committed in December 2012. Castillo entered a plea agreement with the State in which Castillo agreed to plead guilty to (1) aggravated assault "[w]ith one prior felony conviction," with a stipulated six-year prison sentence, and (2) resisting arrest, with a period of supervised probation to follow the prison sentence. The agreement further specified that Castillo acknowledged five prior felony convictions and that he had been on release at the time of the offenses. The superior court accepted Castillo's guilty plea and sentenced Castillo in accordance with the terms of the plea agreement to the stipulated, aggravated six-year prison term followed by a three-year term of probation.

¶3 Castillo then filed a petition for post-conviction relief, arguing that the court had improperly considered more than one prior conviction to impose an aggravated sentence for aggravated assault. The superior court summarily dismissed the petition, explaining that it had properly considered one prior felony conviction (as specified in the plea agreement) to underpin an enhanced sentencing range, and considered Castillo's other prior felony convictions (acknowledged in the plea agreement) only as an aggravating factor to support an aggravated sentence of six years (to which Castillo had stipulated in the plea agreement) within that range. This petition for review followed.

¶4 Castillo argues the superior court imposed an illegal sentence because it considered his five prior felony convictions in imposing an aggravated sentence even though the plea agreement specified that he was pleading guilty to aggravated assault "[w]ith one prior felony conviction." As the superior court correctly explained (and as specified in the plea

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agreement itself), Castillo's guilty plea to aggravated assault with one prior conviction authorized an enhanced range (2.25 - 3 - 4.5 - 6 - 7.5) for sentencing. See A.R.S. § 13-703(B)(2), (I) (2012). Castillo stipulated in the plea agreement to a six-year aggravated prison term, and the court's imposition of this stipulated, aggravated term—within the authorized range—was supported by consideration of all five of Castillo's prior convictions (which Castillo also acknowledged in the plea agreement). See A.R.S. § 13-701(D)(11) (2012); see also *State v. Bonfiglio*, 228 Ariz. 349, 354, ¶ 21 (App. 2011), *aff'd*, 231 Ariz. 371 (2013) (noting that the same convictions may be used both as enhancers and as aggravating factors). Accordingly, the sentence imposed was within the range authorized by law and was consistent with Castillo's plea agreement.

¶5 Castillo's petition for review also asserts that he was coerced by trial counsel to enter the plea agreement. But Castillo did not raise this issue before the superior court, and we decline to address it for the first time on review. See Ariz. R. Crim. P. 32.9(c)(1)(ii); see also *State v. Bortz*, 169 Ariz. 575, 577 (App. 1991).

¶6 We therefore grant review, but deny relief.



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