

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

v.

RICHARD LEE NAVE, *Appellant*.

No. 1 CA-CR 15-0839
FILED 11-10-2016

Appeal from the Superior Court in Maricopa County
No. CR2015-115520-001
The Honorable Erin O'Brien Otis, Judge *Pro Tempore*

CONVICTIONS AFFIRMED; SENTENCE AFFIRMED AS MODIFIED

COUNSEL

Arizona Attorney General's Office, Phoenix
By Joseph T. Maziarz
Counsel for Appellee

Maricopa County Public Defender's Office, Phoenix
By Carlos Daniel Carrion
Counsel for Appellant

STATE v. NAVE
Decision of the Court

MEMORANDUM DECISION

Chief Judge Michael J. Brown delivered the decision of the Court, in which Judge Peter B. Swann and Judge Lawrence F. Winthrop joined.

B R O W N, Chief Judge:

¶1 Richard Lee Nave appeals his convictions and resulting sentences for (1) one count of burglary in the third degree, a class four felony, with two prior felony convictions, and (2) one count of possession of drug paraphernalia, a class six felony, with two prior felony convictions. Nave argues the sentencing minute entry contains clerical errors because it lists the offenses as non-repetitive and cites the incorrect sentencing statute. The state concedes error, and acknowledges the sentencing minute entry may be corrected without remand.

¶2 “When a discrepancy between the court’s oral pronouncement of a sentence and the written minute entry can be clearly resolved by looking at the record, the oral pronouncement in open court controls over the minute entry.” *State v. Ovante*, 231 Ariz. 180, 188, ¶ 38 (2013) (internal quotation omitted). At the sentencing hearing, the trial court explained that Nave was guilty of burglary and possession of drug paraphernalia, and that both offenses were repetitive based on Nave’s two prior felony convictions. The sentencing minute entry, however, lists the two offenses as non-repetitive and refers to Arizona Revised Statutes (“A.R.S.”) section 13-702 (the sentencing scheme for a first offense) instead of A.R.S. § 13-703 (the sentencing scheme for repetitive offenses).

¶3 Accordingly, we affirm Nave’s convictions and sentences, but order that the sentencing minute entry be corrected to reflect that Nave was sentenced on both counts as a repetitive offender, under A.R.S. § 13-703.



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