

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION TWO

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THE STATE OF ARIZONA,  
*Appellee,*

*v.*

FRANCISCO OCTAVIO OCHOA,  
*Appellant.*

No. 2 CA-CR 2015-0210  
Filed May 16, 2016

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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NOT FOR PUBLICATION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. 31.24.*

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Appeal from the Superior Court in Pima County  
No. CR20142201001  
The Honorable Richard S. Fields, Judge

**AFFIRMED AS CORRECTED**

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COUNSEL

Steven R. Sonenberg, Pima County Public Defender  
By Abigail Jensen, Assistant Public Defender, Tucson  
*Counsel for Appellant*

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**MEMORANDUM DECISION**

Judge Miller authored the decision of the Court, in which Presiding Judge Vásquez and Chief Judge Eckerstrom concurred.

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M I L L E R, Judge:

¶1 Following a jury trial, appellant Francisco Ochoa was convicted of second-degree burglary, a class three felony, and sentenced to a mitigated prison term of 7.5 years. Counsel has filed a brief in compliance with *Anders v. California*, 386 U.S. 738 (1967), *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), and *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999), avowing she “reviewed the entire record and has been unable to find any arguably meritorious issue to raise on appeal,” and requesting that this court review the record for error. Ochoa has not filed a supplemental brief.

¶2 The evidence, viewed in the light most favorable to sustaining the jury’s verdict, established Ochoa and two other individuals entered the victim’s home without permission through a window at the back of the house. They removed two televisions and a laptop computer, which they left outside the house when the victim’s son arrived and they fled. Tucson Police Officer Scott Carner apprehended Ochoa at a nearby store based on the description given by a witness (the victim’s son), and found a set of keys belonging to the victim in Ochoa’s pocket. Additionally, the witness identified Ochoa as one of the persons he had seen at the victim’s house during the incident. There was sufficient evidence establishing Ochoa committed the charged offense of second-degree burglary, in violation of A.R.S. § 13-1507.

¶3 In reviewing the record, we have discovered an error in the sentencing minute entry. The state alleged and the jury found Ochoa had committed the offense while on probation for purposes of the special sentencing provisions of A.R.S. § 13-708. But at the

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sentencing hearing, the state moved to withdraw the allegation of Ochoa's release status as a sentence "enhancer" pursuant to § 13-708, which would have required the trial court to impose no less than the presumptive prison term of 11.25 years for a category three repetitive offender with two historical prior felony convictions. *See* A.R.S. § 13-703(G), (J). The state asked that Ochoa's release status be considered an aggravating circumstance instead, so that the 7.5-year mitigated prison term would be available as a sentencing option. The court granted that motion and imposed the mitigated term. The sentencing minute entry nevertheless states Ochoa was sentenced pursuant to § 13-708 based on his release status. The minute entry is therefore corrected and the references to Ochoa's release status in the judgment of sentence in this context are stricken.

¶4 We have reviewed the record for fundamental error as requested and have found none, other than the error in the sentencing minute entry. We therefore affirm the conviction and the sentence, as corrected.