

EVIDENCE — Prior Convictions — Court, not jury, determines whether defendant has prior conviction — Revised 3/2010

Before 1996, a defendant was entitled to a jury trial on his prior felony convictions. See generally *State v. Quinonez*, 194 Ariz. 18, 19, ¶ 5, 926 P.2d 267, 268 (App. 1999). The Arizona Legislature then amended the statutes. Now, under A.R.S. § 13-703(N), the court, not the jury, determines whether the defendant has a historical prior felony conviction. That subsection provides in part, "The penalties prescribed by this section shall be substituted for the penalties otherwise authorized by law if the previous conviction is charged in the indictment or information and admitted or found by the court." In *Quinonez*, the defendant challenged the constitutionality of A.R.S. § 13-604(P) (now A.R.S. § 13-703(N)), alleging that it denied him his right to a jury trial. The Court of Appeals rejected that argument, stating, "Because that allegation is a sentencing factor, the constitutional right of jury trial does not apply to it." *Id.*, at ¶ 9; see also *Newkirk v. Nothwehr*, 210 Ariz. 601, 604, 115 P.3d 1264, 1267 (App. 2005) (an allegation of prior conviction has no common-law antecedent that would require a jury trial).