

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

MAY 22 2013

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2012-0188
)	DEPARTMENT A
Appellee,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
ANDREA JOSEPHINE SIMON,)	the Supreme Court
)	
Appellant.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20112868001

Honorable Richard S. Fields, Judge

AFFIRMED IN PART; VACATED IN PART

Isabel G. Garcia, Pima County Legal Defender
By Stephan J. McCaffery

Tucson
Attorneys for Appellant

H O W A R D, Chief Judge.

¶1 After a jury trial, appellant Andrea Simon was convicted of four counts of sale and/or transfer of a narcotic drug, cocaine, a class two felony. The trial court sentenced Simon to minimum, concurrent, four-year prison terms on each count. Counsel has filed an opening brief in compliance with *Anders v. California*, 386 U.S. 738, 744 (1967), and *State v. Clark*, 196 Ariz. 530, ¶ 30, 2 P.3d 89, 96 (App. 1999), and avows he has reviewed the entire record and has found no meritorious issue to raise on appeal. He requests that this court review the record for error. Simon has not filed a supplemental brief.

¶2 Having reviewed the record as requested, and having viewed the evidence in the light most favorable to sustaining the verdicts, we conclude there was substantial evidence Simon violated A.R.S. § 13-3408(A)(7), thereby supporting the convictions. *State v. West*, 226 Ariz. 559, ¶¶ 15-16, 250 P.3d 1188, 1191 (2011). The evidence included the testimony of an undercover officer who purchased cocaine or cocaine base from Simon on four separate occasions, as alleged in the indictment, and the chemist who identified the substance Simon had sold.

¶3 In addition, the minimum, four-year prison terms the trial court imposed were within the statutory parameters, *see* A.R.S. § 13-702(D), and the record reflects they were imposed in a lawful manner. *See State v. House*, 169 Ariz. 572, 573, 821 P.2d 233, 234 (App. 1991) (sentence outside applicable range illegal); *State v. Anderson*, 181 Ariz. 18, 19-20, 887 P.2d 548, 549-50 (App. 1993) (sentence imposed in unlawful manner when court sentences defendant without material information). However, we have discovered the sentencing minute entry provides that the fines, fees, and/or assessments

the court had imposed were “reduced to a criminal restitution order [CRO]” The CRO was recorded on May 30, 2012. But as this court has determined, based on A.R.S. § 13-805(C), “the imposition of a CRO before the defendant’s probation or sentence has expired ‘constitutes an illegal sentence, which is necessarily fundamental, reversible error.’” *State v. Lopez*, 658 Ariz. Adv. Rep. 4, ¶ 2 (Ct. App. Apr. 8, 2013), quoting *State v. Lewandowski*, 220 Ariz. 531, ¶ 15, 207 P.3d 784, 789 (App. 2009). Therefore, because this portion of the sentencing minute entry is not authorized by statute, we vacate the CRO. The convictions and sentences are otherwise affirmed.

¶4 We affirm the convictions and sentences imposed for the reasons stated in this decision.

/s/ Joseph W. Howard

JOSEPH W. HOWARD, Chief Judge

CONCURRING:

/s/ Peter J. Eckerstrom

PETER J. ECKERSTROM, Presiding Judge

/s/ Michael Miller

MICHAEL MILLER, Judge