

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

JUL 15 2013

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2012-0448
)	DEPARTMENT A
Appellee,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
ROBERT RAY WHITE,)	the Supreme Court
)	
Appellant.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20104225001

Honorable Deborah Bernini, Judge

AFFIRMED IN PART; VACATED IN PART

West, Elsberry, Longenbaugh & Zickerman, PLLC
By Anne Elsberry

Tucson
Attorneys for Appellant

H O W A R D, Chief Judge.

¶1 Appellant Robert White was convicted after a jury trial of possession of methamphetamine, possession of cocaine, and conducting a business or professional transaction without a required license. The trial court sentenced him to concurrent jail terms, the longest of which was one year. Counsel has filed a brief in compliance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999), stating she has reviewed the record but found no “arguable meritorious issues” to raise on appeal and asking us to review the record for fundamental error. White has not filed a supplemental brief.

¶2 We view the evidence in the light most favorable to upholding the jury’s verdicts. *See State v. Haight-Gyuro*, 218 Ariz. 356, ¶ 2, 186 P.3d 33, 34 (App. 2008). In 2010, White performed or offered to perform a procedure on several women—“ozone therapy” as a medical treatment using medical-grade oxygen—without having the appropriate license to administer medical-grade oxygen. Cocaine and methamphetamine were found during a search of his home. This evidence is sufficient to support his convictions. *See* A.R.S. §§ 13-3401(5), (6)(a)(xxxiv), (20)(z); 13-3407(A)(1); 13-3408(A)(1); 13-3706.

¶3 White’s sentences are within the prescribed statutory range and were imposed lawfully. *See* A.R.S. §§ 13-702(D); 13-707(A)(2); 13-901(F), 13-901.01(A), (H)(4); 13-3407(B)(1); 13-3408(B)(1); 13-3706(B). The sentencing minute entry, however, provides that the “fines, fees, assessments and/or restitution” the court had imposed were “reduced to a Criminal Restitution Order [CRO]” But this court has determined that, 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*, 231 Ariz. 561, ¶ 2, 298 P.3d 909, 909 (App. 2013), *quoting State v. Lewandowski*, 220 Ariz. 531, ¶ 15, 207 P.3d 784, 789 (App. 2009). Therefore, this portion of the sentencing minute entry is not authorized by statute.

¶4 Pursuant to our obligation under *Anders*, we have searched the record for fundamental, reversible error and found none save the improper criminal restitution order. *See State v. Fuller*, 143 Ariz. 571, 575, 694 P.2d 1185, 1189 (1985) (*Anders* requires court to search record for fundamental error). The criminal restitution order is vacated; White’s convictions and sentences are otherwise affirmed.

/s/ Joseph W. Howard

JOSEPH W. HOWARD, Chief Judge

CONCURRING:

/s/ Garye L. Vásquez

GARYE L. VÁSQUEZ, Presiding Judge

/s/ Michael Miller

MICHAEL MILLER, Judge