

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

---

THE STATE OF ARIZONA,  
*Appellee,*

*v.*

JORGE CARLOS ESCALANTE,  
*Appellant.*

No. 2 CA-CR 2012-0482  
Filed February 19, 2014

---

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NOT FOR PUBLICATION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); Ariz. R. Crim. P. 31.24.

---

Appeal from the Superior Court in Pima County

No. CR20113728001

The Honorable Richard D. Nichols, Judge

**AFFIRMED AS CORRECTED IN PART; VACATED IN PART**

---

COUNSEL

Harriette P. Levitt, Tucson  
*Counsel for Appellant*

STATE v. ESCALANTE  
Decision of the Court

---

MEMORANDUM DECISION

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

---

MILLER, Judge:

¶1 In 2012, Jorge Escalante was convicted after a jury trial of aggravated assault with a dangerous weapon and unlawful discharge of a firearm in or into the city limits.<sup>1</sup> The trial court found Escalante had two historical prior felony convictions and considered as aggravating factors two nonhistorical prior convictions and the dangerous nature of the assault. The court then sentenced Escalante to concurrent, partially aggravated sentences, the longer of which is thirteen years, and granted him 393 days of presentence incarceration credit. 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), stating she has reviewed the record but found “no arguable issues on appeal” and asks this court “to search the entire record for error.” Escalante has not filed a supplemental brief.

¶2 Viewed in the light most favorable to upholding the jury’s verdicts, *State v. Haight-Gyuro*, 218 Ariz. 356, ¶ 2, 186 P.3d 33, 34 (App. 2008), the evidence established that in October 2011, during an incident in front of a convenience store in Tucson, Escalante “put [a] gun to [the victim’s] head,” and then he “pointed [the gun] kind of behind him[self]” and “fired the gun off into the air.” See A.R.S. §§ 13-1204(A)(2), 13-3107.

¶3 The sentences were imposed after a hearing to determine, in part, Escalante’s status as a repetitive offender. As to both counts, the trial court found two nondangerous historical

---

<sup>1</sup>This trial was preceded by two mistrials.

STATE v. ESCALANTE  
Decision of the Court

felonies from Pima County Case Numbers CR20040931 and CR20041866. The written judgment, however, shows both offenses as “nonrepetitive,” which will be corrected to show as repetitive. See *State v. Hanson*, 138 Ariz. 296, 304-05, 674 P.2d 850, 858-59 (App. 1983) (“Where there is a discrepancy between the oral sentence and the written judgment, the oral pronouncement of sentence controls.”); see also *State v. Trujillo*, 227 Ariz. 314, ¶¶ 35-37, 257 P.3d 1194, 1202 (App. 2011) (defendant found guilty by a jury of aggravated assault, a dangerous offense, could be sentenced as a non-dangerous, repetitive offender). Further, the sentencing minute entry also characterizes the unlawful discharge of a firearm as “dangerous.” This should be corrected to show nondangerous.

¶4 In our examination of the record pursuant to *Anders*, we found no reversible error and no arguable issue warranting further appellate review with respect to the trial and sentences imposed. See *Anders*, 386 U.S. at 744. The evidence is sufficient to support the jury’s verdicts, and Escalante’s sentences are within the prescribed statutory range and were lawfully imposed. See A.R.S. § 13-703(C), (J). However, we note that in its sentencing minute entry, the trial court ordered that all “fines, fees, and assessments are reduced to a Criminal Restitution Order.” This court has found that A.R.S. § 13-805, as it existed before its 2012 amendment, effective in April 2013, see 2012 Ariz. Sess. Laws, Ch. 269, § 1, did not permit such an order, the entry of which is fundamental, reversible error. See *State v. Lopez*, 231 Ariz. 561, ¶ 2, 298 P.3d 909, 910 (App. 2013). Accordingly, we affirm Escalante’s convictions and sentences, but vacate the criminal restitution order and correct the sentencing order to show both counts as repetitive rather than “nonrepetitive,” and Count Two as nondangerous.