

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

MICHAEL ANTHONY GARCIA,
Appellant.

No. 2 CA-CR 2012-0502
Filed December 16, 2013

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NOT FOR PUBLICATION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. CR20111535001
The Honorable Deborah Bernini, Judge

AFFIRMED IN PART; VACATED IN PART

COUNSEL

Thomas C. Horne, Arizona Attorney General
By Joseph T. Maziarz, Section Chief Counsel, Phoenix
and Diane Leigh Hunt, Assistant Attorney General, Tucson
Counsel for Appellee

Isabel G. Garcia, Pima County Legal Defender
By Stephan J. McCaffery, Assistant Legal Defender, Tucson
Counsel for Appellant

MEMORANDUM DECISION

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

V Á S Q U E Z, Presiding Judge:

¶1 Appellant Michael Garcia appeals from his convictions for aggravated driving under the influence (DUI) and aggravated driving with an alcohol concentration (AC) of .08 or more, both while his license was suspended, revoked, or restricted. He maintains the trial court committed “reversible error” in entering a criminal restitution order (CRO) at sentencing. We agree.

¶2 We view the facts in the light most favorable to sustaining the verdicts. *See State v. Tamplin*, 195 Ariz. 246, ¶ 2, 986 P.2d 914, 914 (App. 1999). In April 2011, a Tucson Police Department officer stopped Garcia’s truck after he observed Garcia speeding and weaving within his lane. Garcia’s license to drive had been suspended; he exhibited cues for impairment on a horizontal gaze nystagmus test, as well as on other field-sobriety tests; and a breath test showed he had an AC of .199 or .201. After a jury trial, Garcia was convicted, and the trial court imposed concurrent, enhanced, mitigated, six-year terms of imprisonment. In its sentencing minute entry, the trial court ordered that the “fines, fees, and/or assessments” the court had imposed were “reduced to a [CRO].”

¶3 In the sole issue raised on appeal, Garcia contends the trial court committed “reversible error” in entering the CRO at sentencing. Garcia did not object to the entry of the CRO below, and we therefore review solely for fundamental error, *see State v. Henderson*, 210 Ariz. 561, ¶ 19, 115 P.3d 601, 607 (2005), which the state concedes exists here.

¶4 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, 910 (App. 2013), quoting *State v. Lewandowski*, 220 Ariz. 531, ¶ 15, 207 P.3d 784, 789 (App. 2009).¹ This is so even when, as here, the trial court delayed the accrual of interest. Nothing in § 13-805, which governs the imposition of CROs, "permits a court to delay or alter the accrual of interest when a CRO is 'recorded and enforced as any civil judgment' pursuant to § 13-805(C)." *Lopez*, 231 Ariz. 561, ¶ 5, 298 P.3d at 910. Therefore, the CRO is vacated. Garcia's convictions and sentences are otherwise affirmed.

¹Section 13-805 has been amended since the date of the offense. See 2012 Ariz. Sess. Laws, ch. 269, § 1; 2011 Ariz. Sess. Laws, ch. 99, § 4; 2011 Ariz. Sess. Laws, ch. 263, § 1. The changes are not material here.