

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

FABIAN IRIQUI ARMENTA,
Appellant.

No. 2 CA-CR 2013-0060
Filed April 9, 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NOT FOR PUBLICATION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. CR20111802001
The Honorable Paul E. Tang, Judge

AFFIRMED IN PART; VACATED IN PART

COUNSEL

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Counsel for Appellee

Law Offices of Cornelia Wallis Honchar, P.C.
By Cornelia Wallis Honchar
Counsel for Appellant

MEMORANDUM DECISION

Chief Judge Howard authored the decision of the Court, in which Judge Miller and Judge Brammer¹ concurred.

H O W A R D, Chief Judge:

¶1 Appellant Fabian Armenta was convicted after a jury trial of four counts of armed robbery, four counts of kidnapping, aggravated robbery, four counts of aggravated assault, first-degree burglary, possession of a narcotic drug (cocaine), and possession of drug paraphernalia. The trial court sentenced Armenta to a combination of presumptive, enhanced, concurrent and consecutive prison terms that totaled more than fifty-six years. On appeal, Armenta contends the trial court committed fundamental error by imposing a Criminal Restitution Order (CRO) at sentencing.

¶2 The state concedes the trial court erred and we agree. The court reduced the “fines, fees, assessments and/or restitution” it had imposed to a CRO, delaying the accrual of “interest, penalties or collection fees” until Armenta was no longer incarcerated in the Department of Corrections. When Armenta was sentenced in January 2013, A.R.S. § 13-805 did not permit the entry of a CRO at sentencing. *See* 2011 Ariz. Sess. Laws, ch. 263, § 1 and ch. 99, § 4. This court has determined that, under former § 13-805(A), “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,

¹The Hon. J. William Brammer, Jr., a retired judge of this court, is called back to active duty and is assigned to serve on this case pursuant to orders of this court and the supreme court.

¶ 15, 207 P.3d 784, 789 (App. 2009). This is so even when, as here, the court delayed the accrual of interest, which it had no statutory authority to do. *Lopez*, 231 Ariz. 561, ¶ 5, 298 P.3d at 910. The statute has since been amended to permit the entry of a CRO for restitution only. 2012 Ariz. Sess. Laws ch. 269, § 1; see *State v. Cota*, ___ Ariz. ___, ¶¶ 14-17, 319 P.3d 242, 246-47 (App. 2014).

¶3 Although we affirm the convictions and the sentences imposed, we vacate the CRO portion of the judgment of sentence.