

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

OCT 30 2013

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2013-0084
)	DEPARTMENT A
Appellee,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
KIMBERLY LYNN ENNIS,)	the Supreme Court
)	
Appellant.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20111707001

Honorable Deborah Bernini, Judge

AFFIRMED IN PART; VACATED IN PART

John William Lovell

Tucson
Attorney for Appellant

MILLER, Judge.

¶1 Following a jury trial, appellant Kimberly Ennis was convicted of possession of methamphetamine and possession of drug paraphernalia. The trial court imposed enhanced, mitigated, concurrent prison terms, the longest of which was 2.25 years. 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 he has reviewed the record and has found no “arguable question of law” to raise on appeal. Counsel has asked us to search the record for fundamental error. Ennis has not filed a supplemental brief.

¶2 Viewed in the light most favorable to sustaining the verdict, the evidence was sufficient to support the jury’s finding of guilt. *See State v. Tamplin*, 195 Ariz. 246, ¶ 2, 986 P.2d 914, 914 (App. 1999). The evidence presented at trial showed that a Tucson Police officer observed Ennis leave a hotel room that was under surveillance for drug activity. In a later search of the room, officers found methamphetamine, pipes, needles, a spoon with methamphetamine residue, and a scale with white residue. A purse containing Ennis’s debit card and a baggie with traces of methamphetamine were also found in the room.

¶3 We further conclude the sentences imposed are within the statutory limit. See A.R.S. §§ 13-703, 13-3407, 13-3415. The sentencing minute entry, however, provides that the “fines, fees, and/or assessments” 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),¹ “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, the CRO is vacated.

¶4 Pursuant to our obligation under *Anders*, we have searched the record for fundamental, reversible error and, with the exception of the CRO, have found none. Therefore, Ennis’s convictions and sentences are affirmed.

/s/ Michael Miller

MICHAEL MILLER, Judge

CONCURRING:

/s/ Joseph W. Howard

JOSEPH W. HOWARD, Chief Judge

/s/ Garye L. Vásquez

GARYE L. VÁSQUEZ, Presiding Judge

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