

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

JAYSON ANDREW SMITH,
Appellant.

No. 2 CA-CR 2013-0086
Filed March 10, 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NOT FOR PUBLICATION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. CR20112359001

The Honorable Christopher Browning, Judge

AFFIRMED IN PART; VACATED IN PART

COUNSEL

Angela C. Poliquin, Hamilton, Montana
Counsel for Appellant

STATE v. SMITH
Decision of the Court

MEMORANDUM DECISION

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

VÁSQUEZ, Presiding Judge:

¶1 Jayson Smith was convicted after a jury trial of two counts of aggravated assault with a deadly weapon and sentenced to concurrent, presumptive, 7.5-year prison terms. 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), asserting she has reviewed the record but found no arguable issue to raise on appeal. Consistent with *Clark*, 196 Ariz. 530, ¶ 32, 2 P.3d at 97, she has provided “a detailed factual and procedural history of the case with citations to the record” and asks this court to search the record for error. Smith has not filed a supplemental brief.

¶2 Viewing the evidence in the light most favorable to sustaining the verdict, *see State v. Tamplin*, 195 Ariz. 246, ¶ 2, 986 P.2d 914, 914 (App. 1999), we find sufficient evidence supports the jury’s findings. Smith opened the passenger door of the victims’ car and pointed a handgun at them through the car window after one of the victims closed the door; Smith then fired at least one shot at them as they drove away, striking one of the victims. A.R.S. §§ 13-1203(A)(1), (2), 13-1204(A)(2). Smith’s prison terms are within the statutory limits and were imposed properly. A.R.S. §§ 13-704(A), 13-1204(D).

¶3 The sentencing minute entry, however, provides that the “fines, fees, assessments and/or restitution” the trial court had imposed were “reduced to a Criminal Restitution Order” (CRO). When Smith was sentenced in February 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 the former § 13-805(A), “the imposition of a CRO before the defendant’s probation or sentence has expired ‘constitutes an illegal sentence,

STATE v. SMITH
Decision of the Court

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).

¶4 Pursuant to our obligation under *Anders*, we have searched the record for fundamental, reversible error and found none save the improper entry of the CRO. See *State v. Fuller*, 143 Ariz. 571, 575, 694 P.2d 1185, 1189 (1985) (*Anders* requires court to search record for fundamental error). Accordingly, we vacate the CRO but we otherwise affirm Smith's convictions and sentences.