

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

ROMAN VILLA,
Appellant.

No. 2 CA-CR 2013-0146
Filed December 9, 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NOT FOR PUBLICATION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. CR20121085001

The Honorable Richard D. Nichols, Judge

AFFIRMED IN PART; VACATED IN PART

COUNSEL

Emily Danies, Tucson
Counsel for Appellant

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MEMORANDUM DECISION

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

MILLER, Judge:

¶1 After a jury trial, appellant Roman Villa was convicted of aggravated assault committed with a deadly weapon or dangerous instrument, a dangerous offense. The trial court sentenced him to an enhanced, minimum, five-year prison term. Counsel has filed a brief in compliance with *Anders v. California*, 386 U.S. 738 (1967), avowing she has reviewed the record and found no arguable legal issues to raise on appeal. She asks this court to search the record for fundamental error. In compliance with *State v. Clark*, counsel also has provided “a detailed factual and procedural history of the case with citations to the record, [so] this court can satisfy itself that counsel has in fact thoroughly reviewed the record.” 196 Ariz. 530, ¶ 32, 2 P.3d 89, 97 (App. 1999). Villa has not filed a supplemental brief.

¶2 We view the evidence in the light most favorable to upholding the jury’s verdict. *State v. Tamplin*, 195 Ariz. 246, ¶ 2, 986 P.2d 914, 914 (App. 1999). At trial, E.A. testified that he had just driven out of a convenience store parking lot when he confronted two pedestrians, Villa and another man, whom he believed had been “laughing at [him].” After the two men crossed the street, E.A. made a u-turn and drove in their direction, and Villa fired two gunshots toward E.A.’s car. Villa testified at trial that he had acted out of fear for his life, and the trial court instructed the jury on the law of self-defense.

¶3 We conclude substantial evidence supported findings of all the elements necessary for Villa’s conviction, *see* A.R.S. §§ 13-1203(A)(2), 13-1204(A)(2), and his sentence is within the range authorized by law, *see* A.R.S. § 13-704(A). The sentencing minute

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entry, however, provides that “all fines, fees, assessments and/or restitution” the court had imposed were “reduced to a Criminal Restitution Order [CRO].” See A.R.S. § 13-805(C).¹ The imposition of a CRO before the expiration of Villa’s sentence “constitute[d] 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). The error is not cured by the trial court’s order that the imposition of interest be delayed until after Villa’s release. See *id.*, ¶ 5.

¶4 In our examination of the record pursuant to *Anders*, we have found no other reversible error and no arguable issue warranting further appellate review. See *Anders*, 386 U.S. at 744. Accordingly, we vacate the CRO but otherwise affirm Villa’s conviction and sentence.

¹Section 13-805 has been amended since Villa’s offense. See 2012 Ariz. Sess. Laws, ch. 269, § 1. We apply the version in effect at the time of the offense. See 2011 Ariz. Sess. Laws, ch. 263, § 1 and ch. 99, § 4; *State v. Lopez*, 231 Ariz. 561, n.1, 298 P.3d 909, 910 n.1 (App. 2013).