

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION TWO

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THE STATE OF ARIZONA,  
*Appellee,*

*v.*

JUAN VALENZUELA,  
*Appellant.*

No. 2 CA-CR 2013-0238  
Filed June 26, 2014

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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NOT FOR PUBLICATION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.

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Appeal from the Superior Court in Pima County  
No. CR20112971002  
The Honorable Paul E. Tang, Judge

**AFFIRMED IN PART; VACATED IN PART**

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COUNSEL

Thomas C. Horne, Arizona Attorney General  
By Joseph T. Maziarz, Section Chief Counsel, Phoenix  
*Counsel for Appellee*

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

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**MEMORANDUM DECISION**

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

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V Á S Q U E Z, Presiding Judge:

¶1 Juan Valenzuela appeals from his convictions and sentences for armed robbery, aggravated robbery, assault, and two counts of kidnapping. Specifically, he argues the criminal restitution order (CRO) imposed at sentencing was improper. We vacate the portion of the CRO pertaining to fees and assessments but otherwise affirm his convictions and sentences.

¶2 After a jury trial, Valenzuela was convicted of the counts listed above and the trial court imposed concurrent, aggravated prison terms, the longest of which is twenty-eight years. The court imposed restitution totaling \$20,522.72 and various fees and assessments totaling \$465, and ordered that all “fees, assessments and/or restitution are reduced to a [CRO], with no interest, penalties or collection fees to accrue while the defendant is in the Department of Corrections.”

¶3 Citing *State v. Lopez*, 231 Ariz. 561, 298 P.3d 909 (App. 2013), and *State v. Lewandowski*, 220 Ariz. 531, 207 P.3d 784 (App. 2009), Valenzuela argues on appeal that the imposition of a CRO at sentencing constitutes fundamental, prejudicial error and the CRO must be vacated in its entirety. Valenzuela is correct that, based on an earlier version of A.R.S. § 13-805, a trial court is not permitted to impose a CRO at sentencing and doing so constitutes fundamental, prejudicial error. See *Lopez*, 231 Ariz. 561, ¶ 2, 298 P.3d at 910; *Lewandowski*, 220 Ariz. 531, ¶ 15, 207 P.3d at 789. But, as the state

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points out, revisions to § 13-805 became effective on April 1, 2013—the date of Valenzuela’s sentencing. *See* 2012 Ariz. Sess. Laws, ch. 269, § 2; *State v. Cota*, 234 Ariz. 180, ¶ 1, 319 P.3d 242, 243 (App. 2014). The current version of § 13-805, specifically subsection (B), permits the entry of a CRO “for the unpaid balance of any court-ordered restitution.” *Cota*, 234 Ariz. 180, ¶ 1, 319 P.3d at 243. And we determined in *Cota* that the new version of the statute applied to anyone sentenced on or after the revisions’ effective date. *Id.* ¶¶ 8-14. Thus, the revisions to § 13-805 permitting the imposition of a CRO for restitution apply to Valenzuela.

¶4 The trial court’s reduction of the fees and assessments to a CRO constitutes fundamental, prejudicial error. But the portion of the CRO pertaining to the restitution award is proper.<sup>1</sup> We therefore vacate the portion of the CRO pertaining to the fees and assessments but otherwise affirm Valenzuela’s convictions and sentences.

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<sup>1</sup>We observed in *Cota* that § 13-805 did not permit the trial court to suspend the accrual of interest on the restitution award in the CRO. *Id.* ¶ 18. But, like in *Cota*, the state did not appeal that aspect of the court’s order and we decline to correct the error to Valenzuela’s detriment. *See id.*