

NOTICE: NOT FOR PUBLICATION.
UNDER ARIZ. R. SUP. CT. 111(c), THIS DECISION DOES NOT CREATE LEGAL PRECEDENT
AND MAY NOT BE CITED EXCEPT AS AUTHORIZED.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Appellee*,

v.

SANTOS VILLAREAL, *Appellant*.

No. 1 CA-CR 12-0752
FILED 11-12-2013

Appeal from the Superior Court in Maricopa County
No. CR2011-123571-004
The Honorable Daniel G. Martin, Judge

CONVICTIONS AFFIRMED; SENTENCES AFFIRMED AS MODIFIED

COUNSEL

Arizona Attorney General's Office, Phoenix
By Michael T. O'Toole

Counsel for Appellee

Maricopa County Office of the Legal Advocate, Phoenix
By Kerri L. Chamberlin

Counsel for Appellant

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MEMORANDUM DECISION

Chief Judge Diane M. Johnsen delivered the decision of the Court, in which Judge John C. Gemmill and Judge Samuel A. Thumma joined.

J O H N S E N, Chief Judge:

¶1 Santos Villareal was convicted of first-degree murder, criminal trespass in the first degree and three counts of kidnapping. He was sentenced to life imprisonment without the possibility of release for 25 years on the first-degree murder conviction, a concurrent term of 2.25 years on the criminal trespass conviction, a concurrent term of 10.5 years on the first kidnapping conviction, and two consecutive 10.5-year terms on each of the other two kidnapping convictions. At sentencing, the superior court ordered Villareal to “submit to DNA testing for law enforcement identification purposes and pay the applicable fee for the cost of that testing.”

¶2 On appeal, Villareal does not dispute his convictions nor the terms of incarceration the superior court imposed. He argues only that the court erred by ordering him to pay for DNA testing pursuant to Arizona Revised Statutes (“A.R.S.”) section 13-610 (2013).¹ The State confesses error, acknowledging that in *State v. Reyes*, 232 Ariz. 468, 472, ¶ 14, 307 P.3d 35, 39 (App. 2013), this court held that A.R.S. § 13-610 does not authorize the court to impose a DNA collection fee on a convicted defendant. We agree that pursuant to *Reyes*, which was issued after Villareal was sentenced, the court erred by imposing the collection fee. We therefore modify the judgment of conviction to omit the requirement that Villareal pay for the cost of DNA testing.

¹ Absent material revision after the alleged offense, we cite a statute’s current version.

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¶3 For the reasons stated, we affirm Villareal's convictions and sentences as modified.



Ruth A. Willingham · Clerk of the Court
FILED: mjt