IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Appellee*,

v.

JAMES RAYMOND GONZALEZ, *Appellant*.

No. 1 CA-CR 12-0773
FILED 11-26-2013

Appeal from the Superior Court in Maricopa County
No. CR2011-160623-001
The Honorable Pamela D. Svoboda, Judge

CONVICTIONS AFFIRMED; SENTENCES AFFIRMED AS MODIFIED

COUNSEL

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By Craig C. Gillespie
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MEMORANDUM DECISION

Judge Samuel A. Thumma delivered the decision of the Court, in which Judge Patricia A. Orozco joined. Presiding Judge Randall M. Howe concurred in part and dissented in part.

T H U M M A, Judge:

¶1 Defendant James Raymond Gonzalez appeals from his kidnapping and sexual conduct with a minor convictions and resulting sentences. Gonzalez argues (1) the verdict forms were deficient; (2) insufficient evidence supports the sexual conduct with a minor conviction and (3) the superior court erred in imposing consecutive sentences. For reasons set forth below, the convictions are affirmed and the sentences are affirmed as modified.

FACTS[1] AND PROCEDURAL HISTORY

¶2 The charges arise out of an incident in April 2009 when Gonzalez, the victim's cousin and the victim's uncle entered the victim's home. The victim, who was thirteen years old at the time, was home alone asleep on a couch with her two-year old twin sisters.

¶3 The victim testified that Gonzalez pulled down her pants, got on top of her and "put his penis in my vagina" and in her anus "a little bit" and it hurt. After Gonzalez got off her, the victim went to the bathroom and felt something "sticky" on her leg that looked "like spit[,] like saliva." Gonzalez gave the victim $20 and told her "not to tell nobody." Gonzalez then sat in the living room between the victim's twin sisters.

¶4 A short time later, when the victim's mother returned home, the victim ran to meet her and told her what happened. The victim's mother started "hitting" and "stomping" on Gonzalez who was lying on

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[1] This court views the evidence in the light most favorable to sustaining the conviction and resolves all reasonable inferences against defendant. *State v. Karr*, 221 Ariz. 319, 320, ¶ 2, 212 P.3d 11, 12 (App. 2008).

the floor, pretending to be passed out or asleep, and eventually the Defendant left. The police were called several hours after the assault.

¶5 The State charged Gonzalez with Count 1, kidnapping, a Class 2 felony and dangerous crime against children; Count 2, sexual conduct with a minor under the age of fifteen (to wit: anal intercourse), a Class 2 felony and dangerous crime against children; and Count 3, sexual conduct with a minor under the age of fifteen (to wit: penile/vaginal intercourse), a Class 2 felony and dangerous crime against children.

¶6 After a six-day trial, the jury found Gonzalez guilty of Counts 1 and 2 but not guilty of Count 3. The superior court sentenced Gonzalez to "less than presumptive" prison terms of "15 flat years" for the kidnapping offense (Count 1) and "18 flat years" for the sexual conduct offense (Count 2), with the sentence for Count 2 to run consecutively to the sentence for Count 1. This court has jurisdiction over Gonzalez' timely appeal pursuant to Article 6, Section 9, of the Arizona Constitution and Arizona Revised Statutes (A.R.S.) sections 12-120.21(A)(1) (1992), 13-4031 and 13-4033 (2010).

DISCUSSION

I. The Verdict Forms Did Not Constitute Fundamental Error.

¶7 Gonzalez argues that the superior court erred by not *sua sponte* indicating "anal intercourse" on the verdict form for Count 2 and "penile/vaginal intercourse" on the verdict form for Count 3, thereby distinguishing the factual bases for the two sexual conduct charges. Gonzalez argues that, consequently, the verdict forms were incomplete and the jury may have been confused about the nature of the charges alleged in Counts 2 and 3. Gonzalez did not timely object to the verdict forms; in fact, he expressly approved of the verdict forms before they were presented to the jury.

¶8 Gonzalez sought an extension of time to file a motion for new trial and, more than 10 days after the verdict, filed a motion for a new trial purporting to challenge the verdict forms, which was denied. "A motion for a new trial shall be made no later than 10 days after the verdict has been rendered." Ariz. R. Crim. P. 24.1(b). As noted in the comment to Rule 24.1(b), the Arizona Supreme Court "has held that the time limit is jurisdictional; a trial court has no power to grant a new trial after its expiration. *State v. Hill*, 85 Ariz. 49, 330 P.2d 1088 (1958)." A*ccord State v. Hickle*, 129 Ariz. 330, 332, 631 P.2d 112, 114 (1981). Accordingly, the

superior court lacked jurisdiction to consider the untimely motion for new trial, meaning that motion does not constitute a timely objection to the verdict forms. *See* Ariz. R. Crim. P. 21.3.

¶9 Because Gonzalez did not timely object to the verdict forms, this court's review on appeal is limited to fundamental error. *See State v. Henderson*, 210 Ariz. 561, 567, ¶¶ 19-20, 115 P.3d 601, 607 (2005). "Accordingly, [Gonzalez] 'bears the burden to establish that "(1) error exists, (2) the error is fundamental, and (3) the error caused him prejudice."'" *State v. James*, 231 Ariz. 490, 493, ¶ 11, 297 P.3d 182, 185 (App. 2013) (citations omitted). Gonzalez has not met this burden.

¶10 Although the better practice might have been to indicate the specific conduct alleged in each count (which could be done by using the "to wit" designations in the indictment), by rule, a verdict form must "specify each count or offense" to which the form pertains. Ariz. R. Crim. P. 23.2(c). The verdict forms here clearly specified that Counts 2 and 3 related to the offenses of sexual conduct with a minor. Therefore, the verdict forms used complied with the rule.

¶11 Apart from compliance with the applicable rule, Gonzalez has not shown any prejudice. At the beginning of trial, the clerk read the indictment to the jury. The indictment clearly differentiated the two offenses by stating, for Count 2, "to wit: anal intercourse" and for Count 3, "to wit: penile/vaginal intercourse." Gonzalez' defense at trial was that he did not commit the charged offenses. Final jury instructions given by the superior court included the directives that each count charged a separate and distinct offense, that the jury needed to decide each count separately and that the jury's finding for each count had to be stated in a separate verdict. In closing argument, Gonzalez' counsel reminded the jury that Count 2 charged "anal intercourse, sexual conduct with a minor . . . Count 2 involves the anus" and that "Count 3 involves vaginal intercourse, sexual conduct with a minor vaginally." Moreover, the jury found Gonzalez guilty of Count 2 but not guilty of Count 3. This record indicates the jury followed the instructions, separately decided the counts and found the State had proven one sexual conduct charge beyond a reasonable doubt but had not proven the other sexual conduct charge beyond a reasonable doubt.

¶12 On this record, Gonzalez has not shown that a lack of specificity on the verdict forms went to the foundation of his case or deprived him of a right essential to his defense or of a fair trial regarding the separate sexual conduct charges. *Henderson*, 210 Ariz. at 568, ¶ 24, 115

P.3d at 608 (error is fundamental if a defendant shows "that the error complained of goes to the foundation of his case, takes away a right that is essential to his defense, and is of such magnitude that he could not have received a fair trial"). Accordingly, Gonzalez has not shown that the verdict forms used for Counts 2 and 3 were fundamental, prejudicial error.

II. Substantial Evidence Supports The Conviction For Count 2.

¶13 Gonzalez argues that the superior court erred in denying his motion for judgment of acquittal on Count 2 based on a lack of substantial evidence. Gonzalez claims the State was compelled to present something more than the victim's testimony that the crime alleged in Count 2 occurred.

¶14 The "question of sufficiency of the evidence is one of law, subject to de novo review on appeal." *State v. West*, 226 Ariz. 559, 562, ¶ 15, 250 P.3d 1188, 1191 (2011) (citation omitted). A motion for judgment of acquittal before verdict should be granted "if there is no substantial evidence to warrant a conviction." Ariz. R. Crim. P. 20(a). "Substantial evidence is that which reasonable persons could accept as sufficient to support a guilty verdict beyond a reasonable doubt." *State v. Davolt*, 207 Ariz. 191, 212, ¶ 87, 84 P.3d 456, 477 (2004). If reasonable persons may fairly differ as to whether the evidence establishes a fact at issue, then the evidence must be considered "substantial." *Id.* (citation omitted).

¶15 As to Count 2, the victim testified that Gonzalez "tried to put [his penis] in [her] butt." She "told him that it hurt," but "he just didn't stop." When asked if Gonzalez' penis went in "a little bit," the victim replied, "A little bit, yeah." On cross-examination, the victim testified that she "yelled out it hurts" when being assaulted anally. This testimony alone is substantial evidence supporting the charge in Count 2. *See State v. Munoz*, 114 Ariz. 466, 469, 561 P.2d 1238, 1241 (App. 1976).

¶16 Gonzalez maintains that the victim's testimony was insufficient because the State presented no corroborating physical evidence of anal penetration. The forensic nurse, however, testified that the victim reported anal penetration to her and that, in her experience, it was not unusual for victims of anal assaults to exhibit no physical evidence of penetration. The credibility of witnesses is a matter for the jury to decide. *State v. Williams*, 209 Ariz. 228, 231, ¶ 6, 99 P.3d 43, 46 (App. 2004). On this record, substantial evidence supported the charge and conviction on Count 2.

III. **Concurrent vs. Consecutive Sentences.**

¶17 The superior court ordered that the sentence for Count 2 be served consecutively to the sentence for Count 1. The parties agree that it was factually impossible for Gonzalez to be guilty of Count 2 (sexual conduct with a minor under the age of fifteen (to wit: anal intercourse)) without also being guilty of Count 1 (kidnapping by restraining the victim). By statute, the Legislature prohibits double punishment for the same act as follows: "An act or omission which is made punishable in different ways by different sections of the laws may be punished under both, but in no event may sentences be other than concurrent." A.R.S. § 13-116. By statute, the Legislature also directs that that a sentence for a dangerous crime against children offense "shall be consecutive to any other sentence imposed on the person at any time." A.R.S. § 13-705(M). As applied, the State argues that "[c]onsecutive sentences were mandated pursuant to A.R.S. § 13-705(M)," while Gonzalez argues that consecutive sentences were illegal given A.R.S. § 13-116. Because Gonzalez did not object at sentencing, the review on appeal is for fundamental, prejudicial error, recognizing that the imposition of an illegal sentence constitutes fundamental, prejudicial error. *State v. Martinez*, 226 Ariz. 221, 224, ¶ 17, 245 P.3d 906, 909 (App. 2011).

¶18 In addressing these competing arguments, the court does not write on a clean slate. Twenty years ago, *State v. Arnoldi*, 176 Ariz. 236, 242, 860 P.2d 503, 509 (App. 1993) rejected the State's argument, finding A.R.S. "§ 13-116 is paramount in the statutory scheme of sentencing," and prohibits consecutive sentences under the statutory predecessor to A.R.S. 13-705(M) when the offenses at issue constitute one act. Under *Arnoldi*, absent statutory language not present here, when convictions are based on the same conduct (as the parties here agree they are), the conflict between the two statutes must be resolved in favor of A.R.S. § 13-116 and concurrent sentences. This aspect of *Arnoldi* was reaffirmed earlier this year in a case deciding the precise issue, under the same statutes, presented here. *State v. Jones*, 232 Ariz. 448, 451, ¶ 13, 306 P.3d 105, 108 (App. 2013); *see also State v. McDonagh*, 232 Ariz. 247, 304 P.3d 212 (App. 2013) (applying *Arnoldi* analysis in construing A.R.S. § 28-1383); *State v. Maldonado*, 206 Ariz. 339, 342, ¶ 13 n.4, 78 P.3d 1060, 1063 n.4 (App. 2003) (dicta).

¶19 Recognizing *Arnoldi* and its progeny require concurrent sentences, the State argues this court "should overrule *Arnoldi*," and the partial dissent agrees. Because the issue is statutory, *Anderjeski v. City Court of Mesa*, 135 Ariz. 549, 551, 663 P.2d 233, 235 (1983) (citing *Missouri v.*

Hunter, 459 U.S. 359, 367–68 (1983)), it is significant that the Legislature has not addressed any perceived issue with *Arnoldi* during the past twenty years. Nor has the Arizona Supreme Court countermanded *Arnoldi* on this point.[2] Accordingly, the court declines the State's request to overrule *Arnoldi*, *Jones* and related cases. Applying *Arnoldi* and *Jones* to this case, A.R.S. § 13-116, requires that the sentences in Counts 1 and 2 be served concurrently.[3]

CONCLUSION

¶20 For the foregoing reasons, Gonzalez' convictions are affirmed and his sentences are affirmed as modified so that the sentences are served concurrently and that the requirement that Gonzalez pay for the cost of DNA testing is omitted.

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[2] In *State v. Sepahi*, the Arizona Supreme Court noted the *Arnoldi* analysis and holding, did not address the validity of *Arnoldi* and "express[ed] no opinion as to the correct disposition of" the "State's argument that *Arnoldi* was incorrectly decided." 206 Ariz. 321, 325, ¶ 21 n.4, 78 P.3d 732, 736, n.4 (2003).

[3] The superior court also ordered Gonzalez to "pay the applicable fee for the cost of" DNA testing. 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 testing fee on a convicted defendant. Accordingly, pursuant to *Reyes*, which was issued after Gonzalez was sentenced, the superior court erred by imposing the DNA testing fee. Therefore, the sentence is further modified to omit the requirement that Gonzalez pay for the cost of DNA testing.

H O W E, Presiding Judge, Concurring in Part, Dissenting in Part,

¶21 I concur in the Majority's affirmance of Gonzalez's convictions and in the modification of his sentence to vacate the requirement that he pay for the costs of the DNA testing. I respectfully dissent, however, from its holding that the trial court erred in imposing consecutive sentences. Gonzalez was convicted of kidnapping and sexual conduct with a minor under the age of fifteen years, both dangerous crimes against children in the first degree. Two statutes required the trial court to impose consecutive sentences for those convictions, A.R.S. §§ 13-1304(B) and –705(M). Section 13–1304(B) provides in relevant part that "[t]he sentence for kidnapping of a victim under fifteen years of age shall run consecutively to any other sentence imposed on the defendant." Section 13–705(M) provides in relevant part that sentences imposed for convictions for dangerous crimes against children "shall be consecutive to any other sentence imposed on the person at any time, including child molestation and sexual abuse of the same victim."

¶22 Of course, A.R.S. § 13–116 prohibits the imposition of consecutive sentences if a criminal act has been "made punishable in different ways by different sections of the laws." This means that a defendant who has committed a single act that violates multiple criminal statutes can be sentenced only to concurrent sentences.[4] *State v. Gordon*, 161 Ariz. 308, 312, 778 P.2d 1204, 1208 (1989). The State concedes here that because Gonzalez could not have committed the sexual conduct offense without first kidnapping the victim, Gonzalez committed a single act for purposes of § 13–116. Thus, § 13–116 directly conflicts with §§ 13–1304(B) and -705(M) as they apply to Gonzalez.

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[4] The prohibition of consecutive sentences for single criminal acts is purely statutory. The protection against double jeopardy established in the United States and Arizona Constitutions does not prohibit the imposition of consecutive sentences for a single criminal act as long as the legislature has so intended. *Missouri v. Hunter*, 459 U.S. 359, 366 (1983); *State v. Siddle*, 202 Ariz. 512, 516 ¶ 9, 47 P.3d 1150, 1154 (App. 2002); *see also State v. Eagle*, 196 Ariz. 188, 190 ¶ 5, 994 P.2d 395, 397 (2000) ("the two clauses have been held to grant the same protection to criminal defendants").

¶23 When statutes directly conflict, more recent and more specific statutes govern over older, more general ones. *Denton v. Superior Court*, 190 Ariz. 152, 157, 945 P.2d 1283, 1288 (1997); *Pima County v. Heinfeld*, 134 Ariz. 133, 134, 136, 654 P.2d 281, 282, 284 (1982). Sections 13-1304(B) and –705(M) are certainly more recent than § 13–116. The Legislature enacted §§ 13–1304(B) and –705(M) (then numbered A.R.S. § 13–604.01(J)) in 1985. 1985 Ariz. Sess. Laws, ch. 364, §§ 6, 15 (1st Reg. Sess.). Section 13–116 has existed in some form since 1901. *See* A.R.S. § 13-1641, Historical Note (West 1956) (repealed); *State v. Arnoldi*, 176 Ariz. 236, 241, 860 P.2d 503, 508 (App. 1993). Sections 13–1304(B) and –705(M) are also more specific statutes than § 13–116. Section 13–1304(B) applies specifically to convictions for the kidnapping of persons under the age of fifteen years, and § 13–705(M) applies specifically to convictions for statutorily-defined dangerous crimes against children. Section 13–116, in contrast, applies generally to all criminal convictions. Sections 13–1304(B) and –705(M) should therefore govern over § 13–116.

¶24 The application of the recency and specificity statutory construction rules furthers the Legislature's intent, particularly here in a case involving dangerous crimes against children. The Legislature determined during territorial days that, as a matter of policy, consecutive sentences are generally inappropriate for defendants who have committed single criminal acts that happen to constitute multiple criminal offenses. In 1985, however, concerned with the prevalence of predatory crimes against children, the Legislature enacted the dangerous crimes against children statute, A.R.S. § 13–604.01 (since renumbered A.R.S. § 13–705), and amended other statutes to increase punishment for defendants convicted of committing certain crimes against children. *See State v. Williams*, 175 Ariz. 98, 102–03, 854 P.2d 131, 135–36 (1993). In doing so, the Legislature "was attempting to respond effectively to those predators who pose a direct and continuing threat to the children of Arizona. The lengthy periods of incarceration are intended to punish and deter those persons, and simultaneously keep them off the streets and away from children for a long time." *Id.*; *see also Arnoldi*, 176 Ariz. at 242, 860 P.2d at 509 ("Those statutes were adopted as a response to the increase in the number of sexual offenses reportedly committed against children and constitute an attempt to punish severely those persons who commit such crimes, particularly recidivist child molesters.").

¶25 Mandating that sentences for kidnapping a person under fifteen years-old and sentences for dangerous crimes against children must be consecutive to any other sentence imposed on a defendant was a significant part of the Legislature's effort to protect children. By enacting

§§ 13–1304(B) and –705(M), the Legislature carved out an exception to the general rule that consecutive sentences are inappropriate for commission of single acts that violate multiple statutes. When the Legislature enacts a statute, it "is presumed to know existing law." *State v. Box*, 205 Ariz. 492, 496 ¶ 10, 73 P.3d 623, 627 (App. 2003) (quoting *Wareing v. Faulk*, 182 Ariz. 485, 500, 897 P.2d 1381, 1386 (App. 1995)). Our primary purpose in interpreting a statute is to give effect to the Legislature's intent. *State v. Kindred*, 232 Ariz. 611, 613 ¶ 6, 307 P.3d 1038, 1040 (App. 2013). Recognizing that the more recent and more specific §§ 13–1304(B) and -705(M) take precedence over the older and more general § 13–116 achieves the Legislature's specific intent to protect Arizona's children from predators by keeping those predators in prison longer while otherwise leaving intact its general intent to not doubly punish defendants for single criminal acts. The Majority sacrifices the Legislature's specific intent to its general intent for the sake of consistency when the Legislature has determined that a particular subset of cases calls for a rule different from the general rule.

¶26 This is not the first time that this court has faced this issue. In *Arnoldi*, 176 Ariz. at 241–42, 860 P.2d at 508–09, and recently in *State v. Jones*, 232 Ariz. 448, 449–51 ¶¶ 5–13, 306 P.3d 105, 106–08 (App. 2013),[5] panels of this court have upended the traditional statutory construction rules and held that the older and more general § 13–116 governs over the more recent and more specific §§ 13–1304(B) and –705(M). With respect, the reasoning of those cases is faulty and should not be followed. The panel in the older case, *Arnoldi*, refused to apply the recency and specificity construction rules and held that § 13–116 controls because it is "paramount" in Arizona's sentencing scheme. 176 Ariz. at 242, 860 P.2d at 509. For that conclusion, the panel relied on *State v. Noble*, 152 Ariz. 284, 731 P.2d 1228 (1987). But *Noble* never declared that § 13–116 was "paramount." Rather, *Noble* addressed whether A.R.S. § 13–604(H)—which regulated the use of prior offenses committed on the same occasion as prior convictions to enhance sentences—prohibited the imposition of consecutive sentences on the defendant. *Noble*, 152 Ariz. at 287, 731 P.2d at 1231. *Noble* sensibly noted that the enhancement statute did not limit the trial court's ability to impose consecutive sentences, "assuming that the judge has complied with other requirements," and then cited to § 13–116. *Id*. That is certainly no statement that § 13–116 is the "paramount" statute in Arizona's sentencing scheme. Moreover, because the defendant in *Noble*

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5 Petition for Review filed August 19, 2013, pending.

committed his crimes before the enactment of the dangerous crimes against children statute, *Noble* bears little relevance in resolving the statutory conflict before us.

¶27 The analysis in *Jones* is similarly faulty. The *Jones* panel first accepted *Arnoldi*'s erroneous premise that § 13–116 is "paramount." 232 Ariz. at 450 ¶ 8, 306 P.3d at 107. Then it presumed that the Legislature approved of *Arnoldi*'s holding because the Legislature has only made minor changes to the dangerous crimes against children statute since *Arnoldi*. *Id*. In doing so, the panel relied on the principle of "legislative acquiescence," which provides that "if the legislature amends a statute after it has been judicially construed, but does not modify the statute in a manner that changes the court's interpretation, we presume the legislature approved of the court's construction and intended that it remain a part of the statute." *Id*. (quoting *Galloway v. Vanderpool*, 205 Ariz. 252, 256–57 ¶¶ 17-18, 69 P.3d 23, 27–28 (2003)).

¶28 But the *Jones* panel erred in applying that principle to *Arnoldi*. "[T]he principle of legislative acquiescence applies only where a statute has been construed by the court of last resort, not an intermediate appellate court." *Sw. Paint & Varnish Co. v. Ariz. Dept. of Envtl. Quality*, 194 Ariz. 22, 25 ¶ 20, 976 P.2d 872, 875 (1999). Because *Arnoldi* is merely a holding of this court, and not our supreme court, *Jones*'s presumption that the Legislature approves of *Arnoldi*'s holding is incorrect.[6] Moreover, legislative acquiescence is "limited to instances in which the legislature has considered and declined to reject the relevant judicial interpretation. We have squarely rejected the idea that silence is an expression of legislative intent." *Id*. at 25–26 ¶ 21, 976 P.2d at 875–76 (internal citation omitted). Nothing suggests that the Legislature has ever considered *Arnoldi*'s interpretation of § 13–116 and declined to reject it.

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[6] The Majority cites *State v. Sepahi*, 206 Ariz. 321, 78 P.3d 732 (2003), *supra*, at ¶ 19 n.2, in its discussion that the Arizona Supreme Court has never "countermanded" *Arnoldi*'s statement that § 13–116 is the "paramount" sentencing statute. The Majority correctly notes that the supreme court expressly declined in *Sepahi* to resolve whether § 13–116 governed over § 13–705(M)'s predecessor. 206 Ariz. at 325 ¶ 21 n.4, 78 P.3d at 736 n.4. The court did so because the issue was not properly before it; this court had not addressed the issue on appeal and neither party had briefed the issue on the petition for review. *Id*. at 325 ¶ 21, 78 P.3d at 736.

¶29 The *Jones* panel also noted that if the Legislature truly intended § 13–705(M) to govern over § 13–116, it would have used "commonly used statutory language indicating that it was intended to take precedence over conflicting statutes," such as "notwithstanding any other statute" or "notwithstanding any other provision to the contrary." *Jones*, 232 Ariz. at 450 ¶ 11, 306 P.3d at 107. Although the Legislature certainly could have taken a "belt-and-suspenders" approach to drafting the statutes (to avoid litigation such as this case and its predecessors), why would it do so when it could rely on the well-known rule of statutory construction that the more recent and more specific statutes govern the older and more general statutes?

¶30 Despite *Arnoldi's* and *Jones*'s faulty analyses, the Majority nevertheless follows them because it is not writing "on a clean slate." This court, however, should not hesitate to correct the slate when it has the opportunity. With respect, *Arnoldi* and *Jones* do not withstand scrutiny and should not be followed.[7]

¶31 Although §§ 13–1304(B) and –705(M) directly conflict with § 13–116, the conflict must be resolved in their favor because they are more recent and more specific than § 13–116, and this effectuates the Legislature's intent for each of the statutes. Because §§ 13–1304(B) and -705(M) required the trial court to impose consecutive sentences on Gonzalez for kidnapping and sexual conduct with a minor, the trial court

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[7] One other decision should be mentioned. In *State v. McDonagh*, this court recently held that a trial court could not impose cumulative fines, surcharges, or assessments for each of the defendant's four convictions for aggravated driving under the influence that arose from a single act of driving because that would violate § 13–116. 232 Ariz. 247, 247 ¶ 1, 304 P.3d 212, 212 (App. 2013). In its analysis, *McDonagh*, like *Jones*, accepts *Arnoldi*'s faulty premise that § 13–116 is the "paramount" statute in Arizona's sentencing scheme. *Id*. at 249 ¶ 8, 304 P.3d at 214. *McDonagh* is otherwise not relevant to the analysis in this case, however, because unlike §§ 13–1304(B) and -705(M), the statute authorizing the impositions of fines, surcharges, and assessments does not necessarily conflict with § 13–116. *See id*. at 250 ¶ 15, 304 P.3d at 215 (holding that although the statute "could be susceptible of being read to authorize cumulative punishments for all convictions," its language does not distinguish between convictions based on single acts as opposed to multiple acts and does not clearly override § 13–116).

did not err in doing so. I therefore dissent from the Majority's decision ordering that the sentences be served concurrently pursuant to § 13–116.