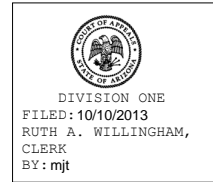


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);



IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) No. 1 CA-CR 13-0105
)
Appellee,) Department S
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
MANUEL RAFAEL ACOSTA,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. CR2012-129016-001

The Honorable Pamela Hearn Svoboda, Judge

CONVICTIONS AFFIRMED; SENTENCES AFFIRMED AS MODIFIED

Thomas C. Horne, Attorney General Phoenix
By Joseph T. Maziarz, Chief Counsel
Criminal Appeals/Capital Litigation Section
Colby Mills, Assistant Attorney General
Attorneys for Appellee

James J. Haas, Maricopa County Public Defender Phoenix
By Jeffrey L. Force, Deputy Public Defender
Attorneys for Appellant

J O H N S E N, Chief Judge

¶1 Manuel Acosta was convicted of three counts of disorderly conduct and one count of unlawful discharge of a firearm, all Class 6 felonies. He was sentenced to consecutive

terms of incarceration and ordered to "submit to DNA testing for law enforcement identification purposes and pay the applicable fee for the cost of that testing."

¶2 On appeal, Acosta does not dispute his convictions nor the terms of incarceration the superior court imposed. He argues only that the court committed fundamental error by ordering him to pay for DNA testing pursuant to Arizona Revised Statutes ("A.R.S.") section 13-610 (2013). 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 Acosta was sentenced, the court erred by imposing the collection fee. We therefore modify the judgment of conviction to omit the requirement that Acosta pay for the cost of DNA testing.

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

_____/S/_____
DIANE M. JOHNSEN, CHIEF JUDGE

CONCURRING:

_____/S/_____
RANDALL M. HOWE, JUDGE

_____/S/_____
DONN KESSLER, JUDGE