NOTICE: NOT FOR PUBLICATION.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.

MICHAEL BAKER, *Appellant*.

No. 1 CA-CR 13-0262

FILED 11-19-2013

Appeal from the Superior Court in Maricopa County
No. CR2011-008285-001
The Honorable Cynthia Bailey, Judge

CONVICTIONS AFFIRMED; SENTENCES AFFIRMED AS MODIFIED

COUNSEL

Arizona Attorney General's Office, Phoenix
By Colby Mills

Counsel for Appellee

Maricopa County Public Defender's Office, Phoenix
By Louise Stark

Counsel for Appellant

MEMORANDUM DECISION

Chief Judge Diane M. Johnsen delivered the decision of the Court, in which Judge Patricia K. Norris and Judge Donn Kessler joined.

J O H N S E N, Chief Judge:

¶1 Michael Baker was convicted of one count of aggravated assault, a Class 3 felony; four counts of endangerment, Class 6 felonies; and one count of discharge of a firearm at a residential structure, a Class 2 felony. The superior court sentenced Baker to 10 years in prison on the aggravated assault conviction, to be served concurrently with a 10.5-year term on the discharge-of-a-firearm conviction. The court imposed consecutive terms of 2.25 years on each of the four endangerment convictions. The court also ordered Baker to "submit to DNA testing for law enforcement identification purposes and pay the applicable fee for the cost of that testing."

¶2 On appeal, Baker does not dispute his convictions nor the terms of incarceration the superior court imposed. He argues, however, 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 Baker was sentenced, the court erred by imposing the collection fee.

¶3 Baker also argues the judgment of conviction erroneously designated his offenses as repetitive and labeled the discharge-of-a-weapon sentence as an aggravated sentence. The State confesses error, acknowledging that the judgment of conviction erroneously described the convictions as "repetitive" and erroneously designated the sentence imposed on the conviction for discharge of a weapon as an aggravated sentence.

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

¶4 When a discrepancy exists between the superior court's oral pronouncement of sentence and the sentencing minute entry, we "must try to ascertain the trial court's intent by reference to the record." *State v. Stevens*, 173 Ariz. 494, 496, 844 P.2d 661, 663 (App. 1992). Here the court stated that it was imposing "presumptive" sentences on Baker for the four endangerment convictions. Because it imposed terms of 2.25 years on each of those convictions, we infer that the court sentenced Baker as a first-time offender, not as a repetitive offender. *Compare* A.R.S. § 13-704(A) (2013) (Class 6 dangerous felony presumptive term for first offense is 2.25 years) *with* A.R.S. § 13-704(B) (2013) (presumptive term for Class 6 dangerous felony, second dangerous offense, is 3.75 years). We also infer that the court sentenced Baker on the aggravated assault conviction as a first-time offender, given that the only prior conviction the court found was a non-dangerous conviction (possession of marijuana for sale), which would not have allowed sentencing as a repetitive offender, and that the court characterized the 10-year term it imposed as an aggravated sentence.[2] By the same token, by contrast to the judgment's designation of the sentence for the discharge-of-a-firearm conviction as an aggravated sentence, the 10.5-year sentence the court imposed corresponds with the presumptive sentence established by A.R.S. § 13-704(A) (Class 2 felony first-time dangerous offense).

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[2] The State's brief addressed the errors in the judgment's characterization of the sentences on the endangerment and discharge-of-a-weapon convictions, but did not address the error in the judgment's characterization of the aggravated assault sentence. The same analysis, however, applies to the latter sentence.

¶5 For the reasons stated, we modify the judgment of conviction to omit the requirement that Baker pay the cost of DNA testing. We also modify the judgment to state that the sentence imposed for the discharge-of-a-weapon conviction was the presumptive sentence, not an aggravated sentence. We further modify the judgment to omit the references to each of the offenses as repetitive offenses.