

NOTICE: NOT FOR PUBLICATION.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.

EDDIE DUPREE TAYLOR, *Appellant*.

No. 1 CA-CR 13-0315

FILED 12-12-2013

Appeal from the Superior Court in Maricopa County

No. CR2011-158912-001

The Honorable Edward W. Bassett, Judge

CONVICTIONS AFFIRMED; JUDGMENT AFFIRMED AS MODIFIED

COUNSEL

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

Counsel for Appellee

Maricopa County Public Defender's Office, Phoenix
By Thomas K. Baird

Counsel for Appellant

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MEMORANDUM DECISION

Chief Judge Diane M. Johnsen delivered the decision of the Court, in which Judge Andrew W. Gould and Judge Randall M. Howe joined.

J O H N S E N, Chief Judge:

¶1 Eddie Dupree Taylor was convicted of five counts of aggravated assault, each a Class 2 dangerous felony; one count of unlawful discharge of a firearm, a Class 6 dangerous felony; one count of misconduct involving weapons, a Class 4 felony; and disorderly conduct, a Class 6 dangerous felony. The superior court sentenced Taylor to various concurrent and/or consecutive terms of incarceration for his several convictions. It granted him 517 days of presentence incarceration and ordered him to "submit to DNA testing for law enforcement identification purposes and pay the applicable fee for the cost of that testing in accordance with [Arizona Revised Statutes ("A.R.S.")] § 13-610."

¶2 On appeal, Taylor does not dispute his convictions nor the terms of incarceration the superior court imposed. He argues only that the court should have allowed him one additional day of presentence incarceration credit and erred by ordering him to pay for DNA testing pursuant to A.R.S. § 13-610 (2013).¹ The State confesses error. It agrees that Taylor was incarcerated for 518 days before he was sentenced, and acknowledges 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 superior court to impose a DNA collection fee on a convicted defendant.

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

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¶3 We agree with the parties that Taylor is entitled to an additional day of presentence incarceration credit. We also agree that, pursuant to *Reyes*, which was issued after Taylor was sentenced, the court erred by imposing the collection fee. We therefore modify the judgment of conviction to increase the presentence incarceration credit to 518 days and to omit the requirement that Taylor pay the cost of DNA testing.



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