

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);
Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 05-25-2010
PHILIP G. URRY, CLERK
BY: GH

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) 1 CA-CR 09-0084
Appellee,)
) DEPARTMENT A
v.)
) **MEMORANDUM DECISION**
KRISTINA KAYE PHALEN,) (Not for Publication-
) Rule 111, Rules of the
Appellant.) Arizona Supreme Court)
)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR 2001-013558

The Honorable Sally Schneider Duncan, Judge

AFFIRMED

Terry Goddard, Attorney General Phoenix
By Kent E. Cattani, Chief Counsel
Criminal Appeals Section/Capital Litigation Section
And Sherri Tolar Rollison, Assistant Attorney General
Attorneys for Appellee

James J. Haas, Maricopa County Public Defender Phoenix
By Tennie B. Martin, Deputy Public Defender
Attorneys for Appellant

O R O Z C O, Judge

¶1 Kristina Kaye Phalen (Defendant) was convicted of one count of forgery, a class four felony; one count of possession or use of dangerous drugs, a class four felony; and one count of

possession of drug paraphernalia, a class six felony. She was sentenced to presumptive terms on all counts and the sentences were ordered to run concurrently. In addition, the trial court stated:

I am ordering a \$1,000 fine. I'm waiving any surcharge on that fine based on the length of your prison sentence. I'm ordering that you participate in an inmate financial responsibility program and that you start making payments while you are in custody. You'll receive credit towards any payments that you make. Again, I'm not going to have that reduced to judgment until you are released from custody so that you don't accrue interest unnecessarily.

¶12 Defendant filed a timely notice of delayed appeal. We have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution and Arizona Revised Statutes (A.R.S.) sections 12-120.21.A.1 (2003), 13-4031 and -4033.A (2010).¹

DISCUSSION

¶13 Defendant raises one issue on appeal: whether the trial court erred in ordering that she begin payment of the \$1000 fine while imprisoned.² Because Defendant did not object to this

¹ We cite to the current version of the applicable statutes because no revisions material to this decision have since occurred.

² To the extent Defendant argues the fine should not be deducted from her prison earnings, this issue is not properly before us. This Court only has jurisdiction to consider the trial court's order from which Defendant appeals. A.R.S. §§ 12-120.21.A.1, 13-4031, -4033.A. Because the trial court did not order mandatory deductions from Defendant's prison earnings, we

issue in the trial court, our review is limited to fundamental error. *State v. Henderson*, 210 Ariz. 561, 567, ¶ 19, 115 P.3d 601, 607 (2005). Under this standard of review, Defendant has the burden of proving that there was error, the error was fundamental and that the error caused her prejudice as a result. *Id.* at ¶ 20.

¶4 Defendant contends that there is no statutory authority, specifically in A.R.S. § 31-254 (Supp. 2009), that “allows the court to order that any potential prison earnings by [Defendant] be applied to the payment of a fine.” Defendant asks this court to “vacate the trial court’s order with respect to the payment of the fine while [Defendant] is imprisoned.” Because we find no error, we decline to do so.

Court’s authority to enter a judgment with fines

¶5 Section 31-254 addresses, among other things, the distribution of prisoner earnings and mandatory deductions from prisoner pay. The State correctly points out that A.R.S. § 31-254 is inapplicable to Defendant’s sentence because the court did not order any mandatory deductions from Defendant’s earnings while she was incarcerated. Instead, the court ordered Defendant “start making payments while [she was] in custody.”

do not have jurisdiction to address how, if at all, the fine is being paid from Defendant’s prison earnings.

¶6 "[A]t the time of sentencing, a trial court has the authority to enter judgment for the total amount a defendant will be required to pay, including fines, fees, costs, and restitution. The court may also order a defendant to make payments during *the term of incarceration or probation.*" *State v. Lewandowski*, 220 Ariz. 531, 534, ¶ 7, 207 P.3d 784, 787 (App. 2009) (emphasis added); see generally A.R.S. §§ 13-801, -808 (2010). The "court may grant permission for payment to be made within a specified period of time or in specified installments." A.R.S. § 13-808.A. If no such permission is set forth in the sentence, "the fine shall be payable immediately." *Id.*

¶7 In this case, Defendant's \$1000 fine was not a mandatory deduction pursuant to A.R.S. § 31-254. Because the trial court did not order the fine's payment directly from Defendant's prison earnings, whether A.R.S. § 31-254 contains "fines" is irrelevant. The trial court was authorized to order Defendant begin paying the imposed fine while she was in custody. See *Lewandowski*, 220 Ariz. at 534, ¶ 7, 207 P.3d at 787.

No prejudice

¶8 Even if we were to assume that the trial court erred in its order requiring Defendant to pay the fine while she was incarcerated, she has not shown how she is prejudiced by the error. See *Henderson*, 210 Ariz. at 567, ¶ 19, 115 P.3d at 607. We have previously held that a criminal restitution order may not

be entered prior to the expiration of a defendant's sentence because the early entry of the order constitutes an illegal sentence due to the mandatory imposition of interest under A.R.S. § 13-805.C (2010). *Lewandowski*, 220 Ariz. at 535, 536, ¶¶ 10, 15, 207 P.3d at 788, 789.

¶9 In this case, the trial court did not order Defendant pay a restitution order; instead, the trial court ordered Defendant to pay a \$1000 fine. The court waived all surcharges relating to the fine. Additionally, the payment was not to be "reduced to judgment until [Defendant was] released from custody." Therefore, the fine did not "accrue interest unnecessarily." Unlike *Lewandowski*, Defendant is not required to pay any additional monies because of the court's order. 220 Ariz. at 535, ¶ 10, 207 P.3d at 788. Defendant still owes \$1000 while in prison; there is no additional accrual of interest. Defendant has not established that she is unable to comply with the court's order and pay the fine while incarcerated.

¶10 Accordingly, Defendant has not met her burden of establishing that she was prejudiced by the trial court's order requiring her to pay a \$1000 fine.

CONCLUSION

¶11 For the above mentioned reasons, we affirm Defendant's convictions and sentences, including the \$1000 fine.

/S/

PATRICIA A. OROZCO, Presiding Judge

CONCURRING:

/S/

DANIEL A. BARKER, Judge

/S/

LAWRENCE F. WINTHROP, Judge