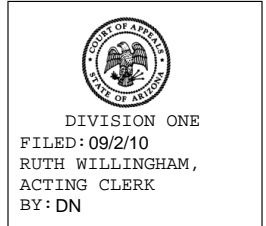


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) No. 1 CA-CR 09-0650
)
Appellee,) DEPARTMENT A
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
ROBERT J. MAJOR,) Rule 111, Rules of the
) Arizona Supreme Court)
)
Appellant.)
)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. No. CR2007-136284-001 SE

The Honorable Frank A. Johnson, Jr., Judge Pro Tempore

AFFIRMED AS MODIFIED

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

James J. Haas, Maricopa County Public Defender Phoenix
By Karen M. V. Noble, Deputy Public Defender
Attorneys for Appellant

S W A N N, Judge

¶1 Robert James Major appeals from the superior court's finding that he violated the conditions of his probation, and

its reinstatement of his probation. For the reasons set forth below, we modify the minute entry of the disposition hearing and affirm.

FACTS AND PROCEDURAL HISTORY

¶12 In January 2008, Major pled guilty to endangerment, a class 6 undesignated felony, and driving under the influence of intoxicating liquor, a class 1 misdemeanor. The court suspended the imposition of sentence and placed Major on probation for three years on both counts.

¶13 In May 2009, Major's probation officer petitioned the court to revoke Major's probation. The matter proceeded to a violation hearing, at which the court found that the State had proved by a preponderance of the evidence that Major violated conditions of his probation requiring him to abstain from alcohol and participate in substance-abuse counseling. The court held a disposition hearing and reinstated probation.

¶14 Major timely appeals. We have jurisdiction pursuant to Article 6, Section 9 of the Arizona Constitution, and A.R.S. §§ 12-120.21(A)(1) (2003), 13-4031 (2010), and 13-4033(A).

DISCUSSION

¶15 Major contends that the court imposed an unlawful sentence and committed fundamental error because the minute entry that followed the disposition hearing improperly assessed \$250 in delinquent drug court fees.

¶16 Under the original conditions of probation, Major was not required to pay drug court fees.¹ He was, however, required to pay \$50 per month in probation service fees. This was a proper assessment pursuant to A.R.S. § 13-901(A) ("When granting probation to an adult the court, as a condition of probation, shall assess a monthly fee of not less than fifty dollars unless, after determining the inability of the probationer to pay the fee, the court assesses a lesser fee.").

¶17 Before the disposition hearing, the court reviewed a violation report in which the probation department reported that Major was delinquent \$250 in his probation service fees.² The report did not mention drug court fees. At the disposition hearing, the court stated simply: "all fines and fees are affirmed." The minute entry does not mention delinquent probation service fees, but assesses \$250 in delinquent drug court fees. The reinstated conditions of probation, however,

¹ Nor were drug court fees applicable to his case. A defendant is eligible for drug court when he has been charged with a probation-eligible offense under Title 13, Chapter 24. A.R.S. § 13-3422(D)(2). The offenses to which Major pled guilty, endangerment and driving under the influence of intoxicating liquor, are not defined under Title 13, Chapter 24. See A.R.S. §§ 13-1201, 28-1381.

² Major's probation officer had previously alleged the delinquency in the petition for revocation, but the State did not present evidence on this allegation at the violation hearing and the court made no finding concerning it.

assess \$250 in delinquent probation service fees and do not mention delinquent drug court fees.

¶18 On this record, we have no difficulty concluding that the court made a simple clerical error in its minute entry and that it intended to impose \$250 in delinquent probation service fees. Major does not dispute that such fees were properly imposed. In these circumstances, we modify the minute entry to reflect the court's intent and affirm. See *State v. Bowles*, 173 Ariz. 214, 216, 841 P.2d 209, 211 (App. 1992) (where there is a discrepancy between a minute entry and the oral pronouncement of sentence, remand for clarification is unnecessary if we are able to discern the superior court's intention by reference to the record); *State v. Paxton*, 186 Ariz. 580, 590, 925 P.2d 721, 731 (App. 1996) (modifying minute entry to correct presentence incarceration credit).

CONCLUSION

¶19 For the reasons set forth above, we affirm but modify the court's minute entry to reflect an assessment of \$250 in delinquent probation service fees instead of delinquent drug court fees.

/s/

PETER B. SWANN, Presiding Judge

CONCURRING:

/s/

MARGARET H. DOWNIE, Judge

/s/

LAWRENCE F. WINTHROP, Judge