IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Appellee,*

v.

ASHLI DANIELLE HECKATHORN, *Appellant*.

No. 1 CA-CR13-0069
FILED 11-21-2013

Appeal from the Superior Court in Yuma County
No. S1400CR201200452
The Honorable David M. Haws, Judge *Pro Tem*

AFFIRMED

COUNSEL

Arizona Attorney General's Office, Phoenix
By Terry M. Crist, III

Counsel for Appellee

Yuma County Public Defender's Office, Yuma
By Edward F. McGee

Counsel for Appellant

MEMORANDUM DECISION

Judge Margaret H. Downie delivered the decision of the Court, in which Presiding Judge Lawrence F. Winthrop and Judge Jon W. Thompson joined.

D O W N I E, Judge

¶1 Ashli Danielle Heckathorn contends on appeal that the trial court improperly imposed a $13 assessment against her at the time of sentencing. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 Heckathorn was indicted on one count of transportation of dangerous drugs for sale ("count 1") and one count of possession of dangerous drugs for sale ("count 2"), both class 2 felonies. A jury found her guilty of both charges. The court sentenced Heckathorn to concurrent five-year terms of imprisonment. At sentencing, the court orally ordered that Heckathorn pay, among other things, "a" $13 assessment.[1] Heckathorn did not object. The minute entry from the sentencing hearing reflects a $13 assessment for each count.

¶3 After sentencing, Heckathorn argued that count 2 was a lesser-included offense of count 1 and asked the court to vacate the judgment of conviction. *See State v. Chabolla-Hinojosa*, 192 Ariz. 360, 363, ¶ 12, 965 P.2d 94, 97 (App. 1998) ("[W]hen the charged possession for sale is incidental to the charged transportation for sale, it is a lesser-included offense, for a person cannot commit the transportation offense without necessarily committing the possession offense."); *see also State v. Ortega*,

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[1] The court described the assessment as "a 13 dollar additional assessment to the Yuma County Narcotics Task Force." We do not address Heckathorn's suggestion that the court erred by ordering the entire amount payable to the task force, rather than the county treasurer pursuant to Arizona Revised Statutes ("A.R.S.") section 12-116.04(B), because she concedes that this does not constitute fundamental error, and she failed to object on this basis below.

220 Ariz. 320, 328, ¶ 25, 206 P.3d 769, 777 (App. 2008) (conviction of both greater and lesser offenses violates Double Jeopardy Clause). The court vacated the conviction on count 2, but affirmed the count 1 conviction. *See State v. Braidick*, 231 Ariz. 357, 360, ¶ 13, 295 P.3d 455, 458 (App. 2013) (courts generally vacate the lesser of two convictions when double jeopardy implicated).

¶4 Heckathorn timely appealed. We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1), 13-4031, and -4033(A).

DISCUSSION

¶5 Heckathorn contends the $13 assessment purportedly imposed for the count 2 conviction constitutes fundamental error and violated her state and federal double jeopardy protections. We review alleged double jeopardy violations *de novo*. *Braidick*, 231 Ariz. at 359, ¶ 6, 295 P.3d at 457 (citation omitted).

¶6 When a defendant fails to object to an alleged error in the trial court, our review is for fundamental error only. *State v. Henderson*, 210 Ariz. 561, 567, ¶ 19, 115 P.3d 601, 607 (2005) (citation omitted). To succeed under fundamental error review, a defendant must demonstrate both that fundamental error occurred and that prejudice resulted. *Id.* at 568, ¶ 20, 115 P.3d at 608 (citations omitted).

¶7 The trial court orally pronounced "a" $13 assessment; it did not state that two $13 assessments (one for each count) were being imposed. Because the discrepancy in the ensuing minute entry "can be clearly resolved by looking at the record," and that record "clearly identifies the intended sentence," the oral pronouncement controls, and we could, if fundamental error existed, order that the sentencing minute entry be corrected. *See State v. Ovante*, 231 Ariz. 180, 188, ¶ 38, 291 P.3d 974, 982 (2013).

¶8 However, Heckathorn cannot demonstrate the requisite prejudice — the second prong under fundamental error review. As the State correctly notes, Heckathorn's conviction on count 2 has been vacated, which means the entire sentence as to that count has been

vacated.[2] Given these circumstances, Heckathorn has suffered no prejudice.

CONCLUSION

¶9 For the reasons stated, we affirm the judgment of the superior court.

[2] Heckathorn does not challenge her conviction on count 1 or the court's authority to impose the $13 assessment as to that count. *See* A.R.S. § 12-116.04(A) ("In addition to any other penalty assessment provided by law, a penalty assessment shall be levied in an amount of thirteen dollars on every fine, penalty and forfeiture imposed and collected by the courts for criminal offenses . . . . ").