

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA,
Appellee,

v.

ROBERT LOUIS FUELLING,
Appellant.

No. 1 CA-CR 21-0232
FILED 5-10-2022

Appeal from the Superior Court in Maricopa County
No. CR2018-118396
The Honorable Geoffrey H. Fish, Judge

AFFIRMED IN PART AND VACATED IN PART

COUNSEL

Arizona Attorney General's Office, Phoenix
By Linley Wilson
Counsel for Appellee

Maricopa County Legal Defender's Office, Phoenix
By Cynthia D. Beck
Counsel for Appellant

STATE v. FUELLING
Decision of the Court

MEMORANDUM DECISION

Judge David D. Weinzweig delivered the decision of the Court, in which Presiding Judge Peter B. Swann and Judge Paul J. McMurdie joined.

WEINZWEIG, Judge:

¶1 Robert Fuelling appeals his convictions and sentences for ten counts of sexual exploitation of a minor. After searching the record and finding no arguable, non-frivolous question of law, Fuelling’s counsel filed a brief in accordance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297 (1969), asking this court to search the record for fundamental error. Fuelling had the chance to file a supplemental brief but did not. After reviewing the record, we affirm Fuelling’s convictions and sentences, but vacate the portion of his sentencing order that required him to pay for DNA testing.

FACTS AND PROCEDURAL BACKGROUND

¶2 In 2017, the Federal Bureau of Investigation determined that someone was downloading child pornography at the Phoenix home that Fuelling shared with his mother. Police executed a search warrant at the home, where they discovered “upwards of 20” images and videos on Fuelling’s computer. Fuelling confessed he downloaded and watched child pornography on his computer.

¶3 Fuelling was arrested and charged with ten counts of sexual exploitation of a minor, a class two felony and dangerous crime against children. *See* A.R.S. § 13-3553. After three years of uncontested continuances to Fuelling and the state, the superior court held a four-day jury trial. Fuelling did not show for his trial and the jury found him guilty on all counts. He was arrested two days later. At sentencing, the court found mitigating factors and imposed the minimum sentence of ten years for each count, served consecutively. The court also ordered Fuelling to pay the costs of DNA testing. Fuelling was awarded 95 days’ pre-incarceration credit. He timely appealed. We have jurisdiction. *See* Ariz. Const., art. 6, sec. 9; A.R.S. §§ 12-120.21(A)(1), 13-4031 and -4033(A)(1).

STATE v. FUELLING
Decision of the Court

DISCUSSION

¶4 We have read and considered counsel's brief and have reviewed the record for reversible error. *See Leon*, 104 Ariz. at 300. Fuelling was present and represented by counsel at all stages of the proceedings against him. The record reflects that the superior court afforded Fuelling all his constitutional and statutory rights, and that the proceedings were conducted in accordance with the Arizona Rules of Criminal Procedure. The court conducted appropriate pretrial hearings, and the evidence presented at trial was enough to support the jury's verdicts. Fuelling's sentence falls within the range prescribed by law, with sufficient credit given for presentence incarceration.

¶5 That said, the court should not have ordered that Fuelling "shall pay costs associated with DNA testing required pursuant to A.R.S. § 13-610." We have explained there is no basis in statute to impose the cost of DNA testing on a convicted defendant. *See State v. Reyes*, 232 Ariz. 468, 472, ¶ 14 (App. 2013). We affirm, except for the language that required Fuelling to pay for DNA test costs, which we vacate.

CONCLUSION

¶6 We affirm Fuelling's convictions and sentences but vacate the portion of the sentencing order that imposed DNA testing costs on Fuelling. Counsel's obligations in this appeal will end once Fuelling is informed of the outcome and his future options, unless counsel finds an issue appropriate for submission to the Arizona Supreme Court by petition for review. *See State v. Shattuck*, 140 Ariz. 582, 584-85 (1984). On the court's own motion, Fuelling has 30 days from the date of this decision to proceed with a pro se motion for reconsideration or petition for review.



AMY M. WOOD • Clerk of the Court
FILED: AA