

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  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

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STATE OF ARIZONA, *Appellee*,

*v.*

SEANATHON JOICLAIRE SHOLES, *Appellant*.

No. 1 CA-CR 21-0497  
FILED 10-27-2022

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Appeal from the Superior Court in Maricopa County  
No. CR2019-005381-001  
The Honorable Laura M. Reckart, Judge

**AFFIRMED AS MODIFIED**

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COUNSEL

Arizona Attorney General's Office, Tucson  
By Diane Leigh Hunt  
*Counsel for Appellee*

Maricopa County Public Defender's Office, Phoenix  
By Lawrence S. Matthew  
*Counsel for Appellant*

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**MEMORANDUM DECISION**

Presiding Judge Samuel A. Thumma delivered the decision of the Court, in which Judge Cynthia J. Bailey and Vice Chief Judge David B. Gass joined.

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**T H U M M A**, Judge:

¶1 Defendant Seanathon Joiclaire Sholes appeals from her probation grant for assault and for resisting arrest, challenging the imposition of \$35 in financial consequences on the resisting arrest conviction. Because the consequences are not authorized by law, they are vacated. Sholes' probation grants are affirmed as modified to remove those consequences.

**FACTS AND PROCEDURAL HISTORY**

¶2 After a bench trial on charges arising out of an August 2018 incident in Phoenix, Sholes was convicted of two Class 1 misdemeanors: Count 1, assault, a domestic violence offense, and Count 4, resisting arrest.

¶3 At sentencing, the court placed Sholes on concurrent unsupervised probation grants for 18 months and imposed financial consequences. As reflected in the written sentencing order, for Count 1, the court imposed a \$50 address confidentiality program assessment; a \$50 family offense assessment; a \$20 probation assessment; a \$20 time payment fee; a \$13 criminal penalty assessment; and a \$2 victim rights enforcement assessment to total \$155. For Count 4, the written sentencing order shows another \$20 time payment fee; another \$13 criminal penalty assessment; and another \$2 victims' rights enforcement assessment, totaling \$35.

¶4 This court has jurisdiction over Shole's timely appeal pursuant to Article 6, Section 9, of the Arizona Constitution and Arizona Revised Statutes (A.R.S.) sections 12-120.21(A)(1), 13-4031 and 13-4033(A).

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DISCUSSION

¶5 “Where there is a discrepancy between the oral sentence and the written judgment, the oral pronouncement of sentence controls.” *State v. Hanson*, 138 Ariz. 296, 304-05 (App. 1983). Both Sholes and the State agree that the court did not impose the \$35 consequences for Count 4 in open court at sentencing and that doing so, for the first time, in the written sentence order is improper. Given this error, Sholes asks this court to vacate the \$35 consequences for Count 4. The State seeks a resentencing, arguing the issues Sholes raises “are not presently ripe because the trial court might not impose any of them on remand.”

¶6 Arizona law does not authorize the \$35 consequences for Count 4. The \$20 time payment fee, the \$13 criminal penalty assessment and the \$2 victims’ rights enforcement assessment each require a predicate fine, penalty or forfeiture. *See* A.R.S. § 12-116(A); A.R.S. § 12-116.04(A); A.R.S. § 12-116.09(A). Here, the court imposed no such predicate fine, penalty or forfeiture for Count 4. *See State v. Dustin*, 247 Ariz. 389 (App. 2019).

¶7 A time payment fee is proper only if the “court imposed a specific stand-alone penalty, fine or sanction that [the defendant] did not pay on the date of sentencing.” *Dustin*, 237 Ariz. at 390–91 ¶ 5. The time payment fee is assessed on the defendant, not on each count, fee, fine or assessment. *See* A.R.S. § 12-116(A). Sholes has already properly been assessed a time payment fee for Count 1, meaning the time payment fee assessed for Count 4 was not authorized by law.

¶8 “The [criminal] penalty assessment. . . is not a stand-alone obligation—it requires that some other fine, penalty or forfeiture be imposed as a predicate, similar to the requirements of the time payment fee.” *Dustin*, 237 Ariz. at 392 ¶ 12; *see also* A.R.S. § 12-116.04(A). Because there was no fine, penalty or forfeiture imposed for Count 4, the criminal penalty assessment for Count 4 was not authorized by law. Similarly, the victims’ rights enforcement assessment “also requires a predicate fine, penalty, or forfeiture.” *Dustin*, 237 Ariz. at 392 ¶ 12; *see also* A.R.S. § 12-116.09(A). Because there was no fine, penalty or forfeiture imposed for Count 4, the victims’ rights enforcement assessment for Count 4 was not authorized by law.

¶9 Because the court did not impose any predicate fine, penalty or forfeiture for Count 4, the \$35 consequences are not authorized by law. Although requesting a remand, the State has not shown that the consequences for Count 4 constitute an illegal sentence and did not cross-

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appeal from the sentence. Thus, no remand is needed, and this court modifies the sentencing order as to Count 4 so that no financial consequences are imposed for that conviction.

**CONCLUSION**

¶10 Sholes' probation grants are affirmed as modified to remove from the consequences for the Count 4 conviction the \$20 time payment fee, the \$13 criminal penalty assessment and the \$2 victims' rights enforcement assessment.



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