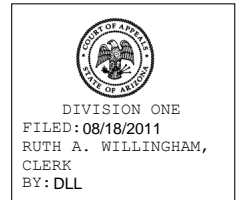


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED  
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.34

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE



STATE OF ARIZONA, ) No. 1 CA-CR 10-0726  
)  
Appellee, ) DEPARTMENT S  
)  
v. ) **MEMORANDUM DECISION**  
) (Not for Publication -  
GREGORY NEAL COOPER, ) Rule 111, Rules of the  
) Arizona Supreme Court)  
Appellant. )  
\_\_\_\_\_ )

Appeal from the Superior Court in Maricopa County

Cause No. CR2005-006707-002 DT

The Honorable Frank A. Johnson, Jr., Judge *Pro Tem*, Retired

**AFFIRMED IN PART; VACATED IN PART**

Thomas C. Horne, Arizona Attorney General Phoenix  
By Kent E. Cattani, Chief Counsel  
Criminal Appeals/Capital Litigation Section  
and Aaron J. Moskowitz, Assistant Attorney General  
Attorneys for Appellee

James J. Haas, Maricopa County Public Defender Phoenix  
By Terry J. Reid, Deputy Public Defender  
Attorneys for Appellant

W I N T H R O P, Chief Judge

¶1 Gregory Neal Cooper appeals the trial court's order reinstating his probation and imposing other conditions, including requiring him to pay a bench warrant fee. Cooper

argues that the court erred because no bench warrant was issued before his arrest, and he asks this court to vacate that portion of the order requiring that he pay the fee. The State confesses error, and we agree.

¶12 In April 2005, Cooper pled guilty to robbery, a class four felony. The trial court suspended sentencing and placed Cooper on three years' probation, to commence upon his absolute discharge from prison for a separate offense. On January 9, 2009, Cooper received an absolute discharge from prison. In April 2010, Cooper admitted violating a term of his probation, and the court continued him on probation.

¶13 On July 15, 2010, Cooper admitted to his probation officer that he had stolen and used a prescription drug belonging to his mother, and the probation officer arrested him. The probation officer filed a petition to revoke Cooper's probation, and at the August 11, 2010 witness violation hearing, the court found that he had violated term 7 of his probation, possession of a prescription drug without a prescription. The court reinstated Cooper on probation and revised some of the conditions of his probation, including imposing a bench warrant fee in the amount of forty-five dollars.

¶14 Cooper filed a timely notice of appeal from the trial court's August 11, 2010 order. We have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution and Arizona

Revised Statutes sections 12-120.21 (2003), 13-4031 (2010), and 13-4033(A) (2010).

¶15 In general, we review a sentence imposed by the trial court for an abuse of discretion. See *State v. Cazares*, 205 Ariz. 425, 427, ¶ 6, 72 P.3d 355, 357 (App. 2003). Because Cooper failed to object below to imposition of the bench warrant fee, however, we review for fundamental, prejudicial error. See *State v. Payne*, 223 Ariz. 555, 560, ¶ 13, 225 P.3d 1131, 1136 (App. 2009). If the bench warrant fee imposed was unauthorized by law, it amounts to an illegal sentence and the court fundamentally erred in imposing it. See *id.* at 560-61, ¶ 14, 225 P.3d at 1136-37.

¶16 A bench warrant fee may only be imposed on a defendant for whom a bench warrant has been ordered for failure to appear or failure to pay fines or fees. See *State v. Soria*, 217 Ariz. 101, 102-03, ¶¶ 5-6, 170 P.3d 710, 711-12 (App. 2007) (citing Maricopa County Superior Court Administrative Order No. 2004-199). In this case, no bench warrant was issued for Cooper; instead, he was arrested by his probation officer at the probation office after he admitted taking his mother's prescription pain medication. Moreover, he was not arrested for his failure to pay a fine or fee. The record does not contain a warrant, a minute entry reflecting that a warrant was issued, a recommendation for a bench warrant fee in Cooper's probation

