

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

FILED BY CLERK

OCT -7 2013

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2012-0037
)	DEPARTMENT B
Appellee,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
JENNIFER MICHELLE SNOUFFER,)	the Supreme Court
)	
Appellant.)	
)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20110130001

Honorable Terry L. Chandler, Judge

DISMISSED

Thomas C. Horne, Arizona Attorney General
By Joseph T. Maziarz and Diane Leigh Hunt

Tucson
Attorneys for Appellee

Lori J. Lefferts, Pima County Public Defender
By Rebecca A. McLean

Tucson
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K E L L Y, Presiding Judge.

¶1 Following a jury trial, Jennifer Snouffer was convicted of theft by control and first-degree trafficking in stolen property and ordered to pay restitution, the full amount of which was to be determined at a later date. More than three months later, after

a restitution hearing, the trial court ordered Snouffer to pay over \$43,000 in restitution to the victim. On appeal, Snouffer challenges only the restitution order on the grounds that she was ordered to pay an amount greater than was charged in the indictment or found at trial and that the amount was unsupported by the evidence. Because we lack jurisdiction, we dismiss the appeal.

Factual and Procedural Background

¶2 We view the facts and all reasonable inferences therefrom in the light most favorable to upholding Snouffer's conviction and sentence. *See State v. Becerra*, 231 Ariz. 200, ¶ 2, 291 P.3d 994, 996 (App. 2013). Snouffer was hired by E.R. to assist in providing her husband around-the-clock care due to various medical conditions. While employed as the husband's caretaker, Snouffer took E.R.'s jewelry and other items, some of which she pawned. Jewelry items subsequently were recovered from two pawn shops and Snouffer's residence; some items never were recovered.

¶3 Following Snouffer's convictions, the trial court suspended imposition of sentence and placed her on concurrent terms of probation, the longer of which was five years. At the time of her sentencing hearing on January 30, 2012, Snouffer was ordered to pay restitution to two pawn shops and to E.R.'s insurance company. The court retained jurisdiction over the award of restitution to E.R. and continued the matter to a restitution hearing on March 5.

¶4 On February 7, before the continued restitution hearing, Snouffer filed a notice of appeal that stated she was appealing from the January 30, 2012 judgment of guilt and sentence. Thereafter, E.R. submitted an affidavit requesting restitution in the

amount of \$43,246.42, which represented jewelry that had not been recovered, estimated to be worth \$40,600; wages E.R. had paid Snouffer; and E.R.'s \$500 insurance deductible. On May 5, two months after the restitution hearing, the trial court ordered Snouffer to pay E.R. the full amount requested. Snouffer did not file either a new or amended notice of appeal after the court entered its restitution order.

Discussion

¶5 Snouffer argues the trial court erred in ordering her to pay restitution for items whose value exceeded the amount charged by the grand jury and found by the trial jury.¹ She also argues the restitution award was improper because it was not supported by credible evidence. Because Snouffer's February notice of appeal did not cite—indeed could not have cited—the court's May 5 restitution order, we first must decide whether, in the absence of a notice of appeal from the May 5 restitution order, we have jurisdiction over her appeal.

¶6 Although the parties have not raised the issue, we have an independent duty to determine whether we have jurisdiction over an appeal. *Baker v. Bradley*, 231 Ariz. 475, ¶ 8, 296 P.3d 1011, 1014-15 (App. 2013). “Jurisdiction to entertain a criminal appeal is vested in this court by the timely filing of a notice of appeal pursuant to a jurisdictional statute.” *State v. Smith*, 171 Ariz. 501, 503, 831 P.2d 877, 879 (App. 1992); *see also State v. Dawson*, 164 Ariz. 278, 280, 792 P.2d 741, 743 (1990) (appellate jurisdiction based on existence of statute conferring right to appeal, timely filing of notice

¹Snouffer was charged and convicted of theft of property with a value of \$3,000 or more, but less than \$4,000.

of appeal, and grounds specified in jurisdictional statute). Our jurisdiction statute permits a criminal defendant to appeal from:

1. A final judgment of conviction or verdict of guilty except insane.
2. An order denying a motion for a new trial.
3. An order made after judgment affecting the substantial rights of the party.
4. A sentence on the grounds that it is illegal or excessive.

A.R.S. § 13-4033(A).

¶7 Except in capital cases, an appeal must be taken by filing a written notice of appeal with the clerk of the trial court. Ariz. R. Crim. P. 31.2(a). “The object of a notice of appeal is to advise the oppos[ing] party that an appeal has been taken from a specific judgment in a specific case.” *State v. Good*, 9 Ariz. App. 388, 392, 452 P.2d 715, 719 (1969); *see also* Ariz. R. Crim. P. 31.2 cmt. (“This rule is intended to provide a simple means for taking appeals and to insure that all persons directly affected by the taking of an appeal are promptly notified.”). Rule 31.2(d) requires that the notice of appeal “shall identify the order, judgment and sentence appealed from and shall be signed by the appellant or his attorney.” The ordinary meaning of “shall” indicates a mandatory provision, absent any evidence of contrary legislative intent. *State v. Jackson*, 210 Ariz. 466, ¶ 21, 113 P.3d 112, 117 (App. 2005). When read together, Rule 31.2 and § 13-4033 require a party to file a notice of appeal identifying the order, judgment, or sentence from which it appeals. Ariz. R. Crim. P. 31.2(d). Nothing in the rule or statute suggests our supreme court or the legislature intended the requirements of either to be optional.

¶8 A restitution order entered after the judgment of conviction and sentence is separately appealable as an order affecting the “substantial rights of the part[ies]” under § 13-4033(A)(3). See *Hoffman v. Chandler*, 231 Ariz. 362, ¶ 7, 295 P.3d 939, 940 (2013) (for non-pleading defendant, § 13-4033(A)(3) authorizes appeal from restitution order as post-judgment order affecting party’s substantial rights); *State v. Fancher*, 169 Ariz. 266, 266 n.1, 818 P.2d 251, 251 n.1 (App. 1991) (although piecemeal appeals disfavored, order of restitution separately appealable). Because the restitution claim had not been resolved by the trial court and its May 5 order had not been entered when Snouffer filed her notice of appeal in February, the notice could not have referenced the restitution order. Snouffer thus did not file a notice of appeal from the trial court’s May 5 restitution order, and we therefore lack jurisdiction over her appeal of the restitution award to E.R. See *State v. Johnson*, 78 Ariz. 211, 213, 277 P.2d 1020, 1022 (1954) (when no legal or proper notice of appeal given, court has no jurisdiction to entertain appeal).

Disposition

¶9 The appeal is dismissed for lack of jurisdiction.

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Presiding Judge

CONCURRING:

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Judge

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge