FILED BY CLERK
JUL 16 2013
COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA, Appellee, v. RAY ANTHONY TAYLOR, Appellant.	)	2 CA-CR 2012-0396 DEPARTMENT A MEMORANDUM DECISION Not for Publication Rule 111, Rules of the Supreme Court

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20114044001

Honorable Richard S. Fields, Judge

AFFIRMED IN PART; VACATED IN PART

Lori J. Lefferts, Pima County Public Defender
By Abigail Jensen
Tucson
Attorneys for Appellant

V Á S Q U E Z, Presiding Judge.

¶1 After a jury trial, appellant Ray Taylor was convicted of possession of a deadly weapon by a prohibited possessor and unlawful discharge of a firearm. After Taylor admitted he had two historical prior felony convictions and he was on probation at the time he committed the offenses, the trial court sentenced him to concurrent, enhanced prison terms of ten and 3.75 years. Appointed counsel has filed a brief in compliance with *Anders v. California*, 386 U.S. 738 (1967), *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), and *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999), avowing she "has been unable to find any arguably meritorious issue to raise on appeal." Taylor has not filed a supplemental brief.

¶2 Viewed in the light most favorable to sustaining the convictions, *see State v. Haight-Gyuro*, 218 Ariz. 356, ¶ 2, 186 P.3d 33, 34 (App. 2008), the state presented sufficient evidence from which reasonable jurors could find Taylor had committed the charged offenses. *See also State v. West*, 226 Ariz. 559, ¶ 15, 250 P.3d 1188, 1191 (2011) (appellate court reviews de novo whether substantial evidence was presented in support of verdict); *State v. Mathers*, 165 Ariz. 64, 67, 796 P.2d 866, 869 (1990) (substantial evidence is more than scintilla and is proof "'reasonable persons could accept as adequate and sufficient to support a conclusion of defendant's guilt beyond a reasonable doubt'"), *quoting State v. Jones*, 125 Ariz. 417, 419, 610 P.2d 51, 53 (1980).

¶3 The evidence established a witness identified Taylor to Tucson police officers as the person he had seen about a half hour earlier firing a shotgun at a car that was speeding away from the area after two men who had been arguing with Taylor had jumped into the car. Officers found spent shotgun shells nearby and found an additional

spent shotgun shell and a twelve-gauge shotgun in Taylor's apartment. From this and other evidence, and the stipulation that Taylor previously had been convicted of a felony and his right to carry a gun or firearm had not been restored, jurors reasonably could find Taylor was a prohibited possessor and had possessed a deadly weapon, in violation of A.R.S. § 13-3102(A)(4), and that, "with criminal negligence[, Taylor] discharge[d] a firearm within or into the limits of any municipality," in violation of A.R.S. § 13-3107(A).

¶4 Taylor's presumptive prison terms are within the prescribed statutory ranges and were imposed in a lawful manner. *See* A.R.S. § 13-703(C), (J) (providing sentencing ranges by class of felony for category three repetitive offender). However, as counsel points out, the sentencing minute entry states that "all fees and assessments are reduced to a Criminal Restitution Order[(CRO)], with no interest, penalties or collection fees to accrue while the defendant is in the Department of Corrections." This court has determined that, based on A.R.S. § 13-805(C), "the imposition of a CRO before the defendant's probation or sentence has expired 'constitutes an illegal sentence, which is necessarily fundamental, reversible error.'" *State v. Lopez*, 231 Ariz. 561, ¶ 2, 298 P.3d 909, 910 (App. 2013), *quoting State v. Lewandowski*, 220 Ariz. 531, ¶ 15, 207 P.3d 784, 789 (App. 2009). Therefore, this portion of the sentencing minute entry is not authorized by statute and is unlawful.

¶5 Pursuant to our obligation under *Anders*, we have searched the record for fundamental, reversible error and, except for the improper criminal restitution order, we have found none. *See State v. Fuller*, 143 Ariz. 571, 575, 694 P.2d 1185, 1189 (1985)

(*Anders* requires court to search record for fundamental error). The criminal restitution order is vacated, but Taylor's convictions and sentences are otherwise affirmed.

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

CONCURRING:

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

/s/ Michael Miller
MICHAEL MILLER, Judge