

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 31 2013

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2012-0500
)	DEPARTMENT A
Appellee,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
EDGAR TOMAS OSOBAMPO,)	the Supreme Court
)	
Appellant.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20120039001

Honorable Howard Fell, Judge Pro Tempore

AFFIRMED IN PART; VACATED IN PART

Emily Danies

Tucson
Attorney for Appellant

V Á S Q U E Z, Presiding Judge.

¶1 Following a jury trial, appellant Edgar Osobampo was convicted of aggravated driving under the influence (DUI) while his license was suspended, aggravated driving with an alcohol concentration (AC) of .08 or more while his license was suspended, aggravated DUI having committed or been convicted of two or more prior DUI violations, and aggravated driving with an AC of .08 or more having

committed two or more prior DUI violations. The trial court imposed an enhanced, minimum prison term of eight years on each count, to be served concurrently. Counsel has filed a brief in compliance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999), stating she has reviewed the record and has found no “arguable question of law” to raise on appeal. Counsel has asked us to search the record for fundamental error. Osobampo has not filed a supplemental brief.

¶2 Viewed in the light most favorable to sustaining the verdicts, the evidence was sufficient to support the jury’s findings of guilt. *See State v. Tamplin*, 195 Ariz. 246, ¶ 2, 986 P.2d 914, 914 (App. 1999). The evidence presented at trial showed that a Tucson Police Department officer saw Osobampo driving his vehicle at a high rate of speed and straddling lane dividers. The officer stopped the vehicle; observed Osobampo with an unopened container of alcohol next to him, watery bloodshot eyes, and a flushed face; and administered field sobriety tests. Osobampo exhibited cues of impairment on each test, a blood test showed he had an AC of .161, his driver license was suspended on the day he was stopped, and he had been convicted of two other DUI offenses in the preceding eighty-four months.

¶3 We conclude the sentences imposed are within the statutory limits. *See* A.R.S. §§ 13-703, 28-1381, 28-1383. The sentencing minute entry, however, provides that the “fines, fees, assessments and/or restitution” the court had imposed were “reduced to a Criminal Restitution Order” (CRO). When Osobampo was sentenced in 2012, A.R.S. § 13-805 did not permit this action. *See* 2011 Ariz. Sess. Laws, ch. 263, § 1 and ch. 99, § 4. This court has determined that, under the former § 13-805(A), “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, although not raised as an issue on appeal, we vacate the CRO. Having found no other fundamental, reversible error in our review pursuant to *Anders*, Osobampo's convictions and sentences otherwise are affirmed.

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

CONCURRING:

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

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Judge*

*A retired judge of the Arizona Court of Appeals authorized and assigned to sit as a judge on the Court of Appeals, Division Two, pursuant to Arizona Supreme Court Administrative Order No. 2012-101 filed December 12, 2012.