

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

SEP -6 2013

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2012-0507
)	DEPARTMENT B
Appellee,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
ADIYIA SUNDIATA,)	the Supreme Court
)	
Appellant.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20102083001

Honorable Christopher Browning, Judge
Honorable Paul E. Tang, Judge

VACATED IN PART; AFFIRMED IN PART AS CORRECTED

Roach Law Firm, L.L.C.
By Brad Roach

Tucson
Attorney for Appellant

ECKERSTROM, Judge.

¶1 Following a jury trial, appellant Adiyia Sundiata was convicted of unlawful use of a means of transportation. The trial court sentenced him to a presumptive, 1.5-year term of imprisonment. Counsel has filed a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), and *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999), stating he has

reviewed the record and has found no “arguable issues on appeal.” Counsel has asked us to search the record for reversible error. Sundiata has not filed a supplemental brief.

¶2 Viewed in the light most favorable to sustaining the verdict, the evidence was sufficient to support the jury’s finding of guilt. *See State v. Tamplin*, 195 Ariz. 246, ¶ 2, 986 P.2d 914, 914 (App. 1999). The evidence presented at trial showed an off-duty police officer had followed Sundiata and another man in a vehicle that had been reported stolen—its owners testified they had not given anyone else permission to drive it. The two men drove the vehicle into a wash and ran, before ultimately being apprehended by other officers.

¶3 We further conclude the sentence imposed is within the statutory limit. *See* A.R.S. §§ 13-702(D), 13-1803(A)(1), (B). 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 Sundiata 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, § 4.¹ 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, the CRO

¹Changes to the statute taking effect “from and after” March 31, 2013, now permit the entry of a CRO at sentencing in cases involving restitution to victims. 2012 Ariz. Sess. Laws, ch. 269, §§ 1, 3.

is vacated. The minute entry also incorrectly cites the statute under which Sundiata was convicted of unlawful use of a means of transportation. Consistent with the trial court's oral pronouncement of sentence, we correct page two of the minute entry to cite A.R.S. § 13-1803 rather than A.R.S. § 13-1814. Having found no other fundamental or reversible error in our review pursuant to *Anders*, Sundiata's conviction and sentence are otherwise affirmed.

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

CONCURRING:

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

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