

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

JUL 16 2013

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

THE STATE OF ARIZONA,	)	2 CA-CR 2013-0008
	)	DEPARTMENT A
Appellee,	)	
	)	<u>MEMORANDUM DECISION</u>
v.	)	Not for Publication
	)	Rule 111, Rules of
JULIAN MAREZ VARELAS,	)	the Supreme Court
	)	
Appellant.	)	
_____	)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20113246001

Honorable Paul E. Tang, Judge

AFFIRMED IN PART; VACATED IN PART

Ronald Zack, PLC  
By Ronald Zack

Tucson  
Attorney for Appellant

V Á S Q U E Z, Presiding Judge.

¶1 Appellant Julian Varelas was convicted after a jury trial of possession of a dangerous drug and possession of drug paraphernalia, and sentenced to concurrent prison terms, the longest of which is seven years.<sup>1</sup> 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 he has reviewed the record but found no “arguable question of law” to raise on appeal and asking us to review the record for fundamental error. Varelas has not filed a supplemental brief.

¶2 We view the evidence in the light most favorable to upholding the jury’s verdicts. *See State v. Haight-Gyuro*, 218 Ariz. 356, ¶ 2, 186 P.3d 33, 34 (App. 2008). In September 2011, Varelas was arrested and, during a search incident to that arrest, police officers discovered in his pockets a syringe and a baggie containing methamphetamine. This evidence is sufficient to support his convictions. A.R.S. §§ 13-3401(6)(c)(xxxiv); 13-3407(A)(1); 13-3415(A).

¶3 Varelas’s sentences are within the prescribed statutory range and were imposed lawfully. *See* A.R.S. §§ 13-702(D); 13-703(C), (J); 13-3407(B)(1); 13-3415(A). The sentencing minute entry, however, provides that the “fines, fees, and assessments” the court had imposed were “reduced to a criminal restitution order [CRO] . . . .” But 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

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<sup>1</sup>Under the same cause number, Varelas pled guilty to possession of a deadly weapon by a prohibited possessor and was sentenced to a 3.5-year concurrent sentence. Relevant to that conviction and his conviction of possession of a dangerous drug, he additionally admitted having two previous felony convictions.

is necessarily fundamental, reversible error.”” *State v. Lopez*, 231 Ariz. 561, ¶ 2, 298 P.3d 909, 909 (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.

¶4 Pursuant to our obligation under *Anders*, we have searched the record for fundamental, reversible error and found none save the improper criminal restitution order. *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; Varelas’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