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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA, Appellee, v. RAUL GONZALES MALDONADO JR., Appellant.	2 CA-CR 2013-0099 DEPARTMENT B MEMORANDUM DECISION Not for Publication Rule 111, Rules of the Supreme Court

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20121993001

Honorable Jane L. Eikleberry, Judge

AFFIRMED AS CORRECTED

Altfeld & Battaile P.C.
By Robert A. Kerry — Tucson
Attorneys for Appellant

E C K E R S T R O M, Judge.

¶1 After a jury trial, appellant Raul Maldonado Jr. was convicted of possession of a deadly weapon by a prohibited possessor and fleeing from a law enforcement vehicle. The trial court denied Maldonado's motions to vacate judgment and for a new trial, found he had one historical prior felony conviction, and sentenced him to enhanced, presumptive, consecutive prison terms totaling 6.75 years.

¶2 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), avowing he has reviewed the entire record and found no arguable question of law to raise on appeal. Consistent with *Clark*, he has provided "a detailed factual and procedural history of the case with citations to the record." 196 Ariz. 530, ¶ 32, 2 P.3d at 97. He asks this court to search the record for fundamental error.

¶3 We view the facts in the light most favorable to sustaining the jury's verdicts and resolve all reasonable inferences against Maldonado. *See State v. Fiihr*, 221 Ariz. 135, ¶ 3, 211 P.3d 13, 14 (App. 2008). Evidence at trial established Maldonado had entered a local tavern, reached under his shirt, produced a gun, and then fled in his truck after a tavern employee disarmed him. When a police officer in a marked patrol vehicle, with emergency lights and siren activated, attempted to stop him for a traffic violation, Maldonado made a u-turn and accelerated to approximately seventy miles per hour. The parties stipulated that Maldonado had been convicted of a felony and that his civil rights had not been restored.

¶4 After the jury returned its guilty verdicts, Maldonado filed motions to vacate the judgment and for a new trial. He argued the convictions violated his protection against double jeopardy because he previously had pleaded guilty to traffic violations related to these same events and, in the context of that guilty plea, the state had dismissed a charge of failing to stop as signaled or instructed by a police officer, *see* A.R.S. § 28-1595(A). According to Maldonado, the state's dismissal of the misdemeanor charge (1) barred his prosecution for felony flight and (2) precluded the state from

introducing evidence of the conduct underlying that charge when prosecuting him as a prohibited possessor.

¶5 We conclude the evidence was sufficient to support these convictions. *See* A.R.S. §§ 13-3102(A)(4), 28-622.01. In denying Maldonado's post-trial motions, the trial court correctly concluded double jeopardy was not implicated by the state's previous dismissal of the misdemeanor charge. *See State v. Eagle*, 196 Ariz. 188, ¶ 6, 994 P.2d 395, 397 (2000) (double jeopardy not violated when "'each [offense] requires proof of an additional fact which the other does not'"), *quoting Blockburger v. United States*, 284 U.S. 299, 304 (1932) (alteration in *Eagle*); *Fiihr*, 221 Ariz. 135, ¶¶ 9-12, 211 P.3d at 15-16 (distinguishing elements of failure to stop and felony flight).

¶6 We have, however, identified two errors in the trial court's sentencing minute entry. First, although the court expressly ordered "that the sentence in Count 2 run consecutively to the sentence in Count 1," and the minute entry reflects the imposition of consecutive sentences, the minute entry also provides for both sentences to commence on the same date. Because "[i]t is . . . manifestly impossible for consecutive sentences to both begin on the same date," *State v. Young*, 106 Ariz. 589, 591, 480 P.2d 345, 347 (1971), we correct the sentencing minute entry to reflect that Maldonado's 2.25-year sentence for felony flight is to begin after he has completed his 4.5-year sentence for the weapons charge. *Cf. State v. Ovante*, 231 Ariz. 180, ¶ 39, 291 P.3d 974, 982 (2013) (correcting similar error). We also delete the portion of the sentencing minute entry purporting to reduce Maldonado's "fines, fees, and assessments" to a Criminal Restitution Order (CRO), "with no interest, penalties or collection fees to accrue" during

his imprisonment. Because the court did not order Maldonado to pay any fines, fees, or assessments, this language has no effect.[1] In all other respects, Maldonado's sentences were authorized by statute and imposed in a lawful manner. *See* A.R.S. § 13-703(I).

¶7 In our examination of the record, we have found no other error and no arguable issue warranting further appellate review. *See Anders*, 386 U.S. at 744. Accordingly, we affirm Maldonado's convictions and sentences, as corrected by this decision, as well as the trial court's denial of his post-trial motions.

/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

[1]We also have concluded such orders are unauthorized by statute and must be vacated. *See State v. Lopez*, 231 Ariz. 561, ¶¶ 2, 5-6, 298 P.3d 909, 910-11 (App. 2013).