

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

ANDREW CHRISTOPHER WENTWORTH,
Appellant.

No. 2 CA-CR 2017-0210
Filed January 10, 2018

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.19(e).

Appeal from the Superior Court in Pinal County
No. S1100CR201602660
The Honorable Lawrence M. Wharton, Judge Pro Tempore

AFFIRMED

COUNSEL

Mark Brnovich, Arizona Attorney General
Joseph T. Maziarz, Chief Counsel, Phoenix
By Elizabeth B. N. Garcia, Assistant Attorney General, Phoenix
Counsel for Appellee

Rosemary Gordon Pánuco, Tucson
Counsel for Appellant

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MEMORANDUM DECISION

Chief Judge Eckerstrom authored the decision of the Court, in which Presiding Judge Staring and Judge Brearcliffe concurred.

ECKERSTROM, Chief Judge:

¶1 Andrew Wentworth appeals from his conviction and sentences for one count of molestation of a child, arguing Arizona’s child molestation statute violates due process and that the trial court illegally ordered him to reimburse the state for the cost of a forensic examination. We affirm.

Factual and Procedural History

¶2 “We view the facts in the light most favorable to sustaining the convictions.” *State v. Fimbres*, 222 Ariz. 293, ¶ 2 (App. 2009). On one occasion between 2015 and 2016, Wentworth was home alone with his six-year-old half-sister, C.C., when he pulled down his pants and showed her his penis. He then told C.C. to remove her pants and underwear, asked her to turn around, and touched her naked “butt” with his erect penis.

¶3 Following trial, the jury convicted Wentworth of one count of molestation of a child under fifteen, a dangerous crime against children. The trial court sentenced Wentworth to a presumptive, enhanced prison term of seventeen years and ordered him to pay, among other fees, a \$500 forensic interview assessment. Wentworth appealed; we have jurisdiction. A.R.S. §§ 13-4031, 13-4033(A)(1).

Due Process

¶4 Wentworth argues Arizona’s child molestation statutes violate due process because they do not require the state to prove sexual motivation, but rather, burden defendants with disproving that element. *See* A.R.S. §§ 13-1407(E), 13-1410. He also challenges the statutory scheme as overbroad. Because Wentworth did not object below, we review for fundamental error. *See State v. Henderson*, 210 Ariz. 561, ¶ 19 (2005).

¶5 In *State v. Holle*, our supreme court addressed these very arguments and determined the statutory scheme did not violate due process. 240 Ariz. 300, ¶¶ 17-19, 35, 41-44, 50 (2016). Thus, we are duty bound to follow our supreme court’s determination in *Holle* that

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§§ 13-1407(E) and 13-1410 do not violate due process as challenged. *See State v. Smyers*, 207 Ariz. 314, n.4 (2004) (“The courts of this state are bound by the decisions of [our supreme] court and do not have the authority to modify or disregard [its] rulings.”). Moreover, we have no choice but to decline Wentworth’s invitation to reconsider *Holle* in light of *May v. Ryan*, 245 F. Supp. 3d 1145 (D. Ariz. 2017), because the decisions of federal district courts neither bind this court nor provide a basis upon which we might overturn the decisions of our supreme court. *See Arpaio v. Figueroa*, 229 Ariz. 444, ¶ 11 (App. 2012). Accordingly, we find no error.¹

Forensic Interview Assessment

¶6 Wentworth also insists the trial court improperly ordered him to pay a \$500 forensic interview assessment, characterizing it as an illegal restitution order. *See State v. Linares*, 241 Ariz. 416, ¶¶ 7-13 (App. 2017) (vacating restitution order awarding state \$550 for cost of forensic examination). Because Wentworth did not object below, we review for fundamental error. *See Henderson*, 210 Ariz. 561, ¶ 19.

¶7 Relying on *Linares*, Wentworth urges forensic interviews are not reimbursable under our state’s criminal restitution statute. *See* A.R.S. § 13-603(C) (“If a person is convicted of an offense, the court shall require the convicted person to make restitution to the person who is the victim of the crime . . .”). Accordingly, he argues the award constitutes an illegal sentence. However, as the state correctly observes, A.R.S. § 12-116.07 requires courts to impose a \$500 assessment on defendants who are convicted of dangerous crimes against children. Section 12-116.07 further provides not only that “[t]he assessment shall not be waived,” but also that such monies shall defray the costs of . . . forensic interviews incurred by county agencies pursuant to A.R.S. § 13-1414. Although the trial court did not articulate the statutory basis for its order, we will affirm its ruling if it was legally correct for any reason. *See State v. Perez*, 141 Ariz. 459, 464 (1984). Accordingly, we find no error.

¹Because the court in *Holle* determined that sexual motivation was not an element of child molestation, we likewise reject Wentworth’s contention that the court was obligated to instruct the jury on sexual intent sua sponte. 240 Ariz. 300, ¶¶ 17-19.

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Disposition

¶8 For the aforementioned reasons, we affirm Wentworth's conviction and sentence.