

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

JACOB LOWELL RENFRO,
Appellant.

No. 2 CA-CR 2019-0083
Filed February 20, 2020

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NOT FOR PUBLICATION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. S1100CR201703012
The Honorable Lawrence M. Wharton, Judge Pro Tempore

AFFIRMED

COUNSEL

Michael Villarreal, Florence
Counsel for Appellant

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MEMORANDUM DECISION

Judge Espinosa authored the decision of the Court, in which Presiding Judge Eppich and Judge Eckerstrom concurred.

ESPINOSA, Judge:

¶1 Jacob Renfro appeals from the superior court’s order denying his motion to enforce a plea agreement by dismissing charges filed against him in justice court. We affirm.

¶2 In December 2017, Renfro pled guilty in superior court to possession of a narcotic drug and was sentenced to a one-year prison term. In December 2018, he filed a motion in superior court seeking to enforce the plea agreement, stating he had been charged in justice court with several offenses arising from the same “investigation and police report that led [to] the plea agreement in this case,” in which the state had agreed “that additional charges would not be brought.” The court denied the motion, observing that it should have been filed in justice court.

¶3 Renfro appealed, and counsel filed an opening brief citing *Anders v. California*, 386 U.S. 738 (1967), and *State v. Clark*, 196 Ariz. 530 (App. 1999), stating he had reviewed the record but “found no arguable issues on appeal,” and asking this court to review the record for error. Renfro has not filed a supplemental brief.

¶4 We ordered Renfro’s counsel to file a supplemental brief addressing two issues, this court’s jurisdiction over the appeal and whether we are required to conduct an *Anders* review of the record. In that supplement, counsel did not meaningfully address either question, acknowledging only that we “may lack jurisdiction . . . because no conviction or sentence is at issue” and, thus, we may not be required to review the record.

¶5 We are required to examine our own jurisdiction, which is controlled by statute. See *Musa v. Adrian*, 130 Ariz. 311, 312 (1981). Absent specific statutory authority, we lack jurisdiction to consider an appeal. *Id.* A defendant’s appeal in a criminal case is governed by A.R.S. § 13-4033,

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which allows a defendant to appeal from a final judgment of conviction, an order denying a new-trial motion, an order made after judgment affecting a party's substantial rights, or an illegal or excessive sentence. Generally, an order made after judgment may be appealable if it addresses an issue that would not arise in a review of the conviction and sentence. *See State v. Ponsart*, 224 Ariz. 518, ¶ 10 (App. 2010); *see also State v. Delgarito*, 189 Ariz. 58, 59 (App. 1997) (order must not "effectively challenge[] [a] plea agreement or sentence").

¶6 The order in question falls squarely into this category. Renfro seeks review of the superior court's denial of his request that it order the state to dismiss pending charges against him in a different court. Because that request stems from the state's conduct well after Renfro's conviction, it could not have been raised previously. And Renfro has the right to seek enforcement of his plea agreement. *Cf. Santobello v. New York*, 404 U.S. 257, 262-63 (1971) (court may order specific performance of plea agreement). We therefore conclude we have jurisdiction under § 13-4033(A)(3).

¶7 But that does not end our inquiry. In *Anders*, the United States Supreme Court directed that counsel should examine the record and determine whether an appeal would be "wholly frivolous" and so advise the court with an accompanying brief "referring to anything in the record that might arguably support the appeal." 386 U.S. at 744. With the aid of that brief, this court then reviews the record for reversible error. *See Clark*, 196 Ariz. 530, ¶ 30. But the *Anders* procedure is limited to the "first appeal from a criminal conviction." 386 U.S. at 739. No conviction is implicated here and, thus, our review is not constitutionally required.

¶8 Renfro has raised no arguments on appeal. We therefore affirm the superior court's order denying his motion to enforce his plea agreement.