NOTICE: NOT FOR PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED.

IN THE
# ARIZONA COURT OF APPEALS
## DIVISION ONE

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STATE OF ARIZONA, *Appellee*,

*v.*

SARA GONZALEZ, *Appellant*.

No. 1 CA-CR 13-0348
FILED 07-01-2014

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Appeal from the Superior Court in Maricopa County
No. CR2012-137145-001
The Honorable John R. Ditsworth, Judge

**CONVICTION AFFIRMED; JUDGMENT AFFIRMED AS MODIFIED**

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COUNSEL

Arizona Attorney General's Office, Phoenix
By Joseph T. Maziarz
*Counsel for Appellee*

Maricopa County Public Defender's Office, Phoenix
By Louise Stark
*Counsel for Appellant*

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**MEMORANDUM DECISION**

Chief Judge Diane M. Johnsen delivered the decision of the Court, in which Judge Margaret H. Downie and Judge John C. Gemmill joined.

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**J O H N S E N**, Judge:

**¶1** Sara Gonzalez was convicted of second-degree burglary, a Class 3 felony. The superior court suspended imposition of sentence and imposed a two-year term of probation. In its written judgment, the court also ordered Gonzalez to "submit to DNA testing for law enforcement identification purposes and pay the applicable fee for the cost of that testing in accordance with [Arizona Revised Statutes ("A.R.S.")] § 13-610."

**¶2** On appeal, Gonzalez does not dispute her conviction nor the term of probation the superior court imposed. She argues only that the court erred by ordering her to pay for DNA testing pursuant to A.R.S. § 13–610 (2014).[1] The State confesses error, acknowledging that in *State v. Reyes,* 232 Ariz. 468, 472, ¶ 14, 307 P.3d 35, 39 (App. 2013), this court held that A.R.S. § 13–610 does not authorize the court to impose a DNA collection fee on a convicted defendant. We agree that pursuant to *Reyes,* which was issued after Gonzalez was sentenced, the court erred by imposing the collection fee. We therefore modify the judgment of conviction to omit the requirement that Gonzalez pay the cost of DNA testing.




Ruth A. Willingham · Clerk of the Court
FILED: gsh

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[1] Absent material revision after the alleged offense, we cite a statute's current version.