

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

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



DIVISION ONE
FILED: 07/17/2012
RUTH A. WILLINGHAM,
CLERK
BY: sls

STATE OF ARIZONA,) 1 CA-CR 11-0530
)
Appellee,) DEPARTMENT A
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
) Rule 111, Rules of the
GEORGE EDWARD KONKUS,) Arizona Supreme Court)
)
Appellant.)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2001-010653

The Honorable Jeffrey A. Rueter, Judge Pro Tempore

AFFIRMED

Thomas C. Horne, Attorney General Phoenix
by Kent E. Cattani, Chief Counsel,
Criminal Appeals/Capital Litigation Section
Attorneys for Appellee

James J. Haas, Maricopa County Public Defender Phoenix
by Tennie B. Martin, Deputy Public Defender
Attorneys for Appellant

P O R T L E Y, Judge

¶1 This is an appeal under *Anders v. California*, 386 U.S.

738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878

(1969). Counsel for Defendant George Edward Konkus has advised us that, after searching the entire record, she has been unable to find any arguable questions of law, and has filed a brief requesting us to conduct an *Anders* review of the record. Defendant was given the opportunity to file a supplemental brief but has not filed one.

FACTS¹

¶2 Defendant pled guilty to kidnapping, a class 2 felony, and aggravated assault, a class 4 felony, in February 2002. In accordance with the plea agreement, he was sentenced to three years in prison, given credit for 171 days of presentence incarceration, and ordered to complete seven years of probation, to begin upon his release from prison. After Defendant was released from prison, and based on the recommendation of his probation officer ("PO"), the court modified the probation terms and added sex offender terms.²

¶3 Defendant refused to acknowledge the July 2004 amended probation terms by signing the form. At the subsequent hearing to revoke his probation, Defendant admitted to possessing a deadly weapon in violation of his probation terms. The court

¹ We review the facts "in the light most favorable to sustaining the conviction[s] and [resolve] all reasonable inferences . . . against the defendant." *State v. Guerra*, 161 Ariz. 289, 293, 778 P.2d 1185, 1189 (1989) (citation omitted).

² The PO based her recommendation on Defendant's 1980 conviction in Texas for sexual abuse of a minor.

reinstated Defendant on probation in August 2004, and added that Defendant had to register as a sex offender if required by law, participate and cooperate in counseling or assistance as directed by the Adult Probation Department ("APD"), and abide by sex offender special conditions.

¶4 Defendant sought to remove the sex offender conditions from his probation terms. The court held a hearing and ultimately reaffirmed the sex offender conditions. Defendant, however, did not challenge the ruling by appeal or special action.

¶5 A petition to revoke Defendant's probation was filed in March 2011 based on allegations that he had violated the special sex offender terms. After a hearing, the court found that Defendant had failed to successfully participate in sex offender counseling and abide by other special conditions. Defendant's probation was revoked and he was sentenced to five years in prison. We have jurisdiction over this appeal pursuant to Article 6, Section 9, of the Arizona Constitution, and Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1), 13-4031, and -4033(A) (West 2012).

DISCUSSION

¶6 At a probation revocation hearing, the State must prove a probation violation by a preponderance of the evidence. Ariz. R. Crim. P. 27.8(b)(3). We will not disturb the trial

court's finding so long as the court did not abuse its discretion. See *State v. Stotts*, 144 Ariz. 72, 79, 695 P.2d 1110, 1117 (1985) (citations omitted) ("An appeals court reviewing a revocation of probation proceeding will not reverse any finding of the trier of fact unless that finding is arbitrary and unsupported by any theory of the evidence.").

¶7 Here, the State presented evidence that Defendant had been referred to every counseling program under contract with the APD. The State also demonstrated that he did not complete any program; Defendant had declined to participate, or was rejected or discharged, before successfully completing any counseling program. Thus, based on the evidence, the court did not err when it concluded that Defendant failed to satisfy the sex offender treatment term, and therefore had violated his probation.³

¶8 We have read and considered counsel's brief and have searched the entire record for reversible error. See *Leon*, 104 Ariz. at 300, 451 P.2d at 881. We find none. The record, as presented, reveals that all of the proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure, that Defendant was represented by counsel at all stages of the

³ Because we find that the court did not err by determining that Defendant did not complete sex offender counseling, we need not address whether the court erred by finding that Defendant also had violated the probation term that required him to wear undergarments while in any place where others may see him.

proceedings, and that the sentences imposed were within the statutory limits.

CONCLUSION

¶9 Accordingly, we affirm the determination that Defendant had violated the terms of his probation, and his subsequent sentence. After this decision has been filed, counsel's obligation to represent Defendant in this appeal has ended. Counsel must only inform Defendant of the status of the appeal and Defendant's future options, unless counsel identifies an issue appropriate for submission to the Arizona Supreme Court by petition for review. *State v. Shattuck*, 140 Ariz. 582, 585, 684 P.2d 154, 157 (1984). Defendant can, if desired, file a motion for reconsideration or petition for review pursuant to the Arizona Rules of Criminal Procedure.

/s/

MAURICE PORTLEY, Presiding Judge

CONCURRING:

/s/

ANN A. SCOTT TIMMER, Judge

/s/

ANDREW W. GOULD, Judge