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EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24



DIVISION ONE  
FILED: 08/28/2012  
RUTH A. WILLINGHAM,  
CLERK  
BY: sls

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

STATE OF ARIZONA, ) No. 1 CA-CR 11-0624  
)  
Appellee, ) DEPARTMENT D  
)  
v. ) **MEMORANDUM DECISION**  
) (Not for Publication -  
ARTURO ALBERTO MARTINEZ, ) Rule 111, Rules of the  
) Arizona Supreme Court)  
Appellant. )  
)  
)  
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2007-030035-001

The Honorable Sheila A. Madden, Judge Pro Tempore

**AFFIRMED**

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

James J. Haas, Maricopa County Public Defender Phoenix  
By Terry J. Adams, Deputy Public Defender  
Attorneys for Appellant

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**S W A N N**, Judge

¶1 Arturo Alberto Martinez appeals from his reinstatement on probation. This case comes to us as an appeal under *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz.

297, 451 P.2d 878 (1969). Martinez's appellate counsel has searched the record on appeal, found no arguable nonfrivolous question of law, and asks us to review the record for fundamental error. See *Anders*, 386 U.S. 738; *Smith v. Robbins*, 528 U.S. 259 (2000); *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999). Martinez was given the opportunity to file a supplemental brief *in propria persona*, but did not do so.

¶12 We have searched the record for fundamental error and find none. Accordingly, we affirm.

#### FACTS AND PROCEDURAL HISTORY

¶13 In May 2008, Martinez pled guilty to one count of kidnapping and one count of attempted sexual assault. For the kidnapping offense, Martinez was sentenced to an exceptionally mitigated prison term of three years, with credit for presentence incarceration. For the attempted sexual assault offense, the superior court suspended the imposition of sentence and placed Martinez on lifetime probation, to commence upon his release from prison.

¶14 In June 2010, Martinez was released from prison, and his probation term began. The written conditions of Martinez's probation required him to, *inter alia*: obey all laws ("Condition 1"); pay a monthly probation service fee of \$50 ("Condition 16(b)"); and not initiate, establish, or maintain contact with any child under the age of eighteen without prior

written approval from the probation department ("Condition 25(1)").

¶15 In July 2011, Martinez's probation officer petitioned the court to revoke Martinez's probation. The petition alleged that Martinez had violated numerous conditions of his probation, including Conditions 1, 16(b), and 25(1).

¶16 A revocation arraignment was held, and Martinez entered a denial. A witness violation hearing followed. At the violation hearing, Martinez's probation officer testified that he had reviewed the conditions of probation with Martinez on two occasions, and on both occasions, Martinez had acknowledged that he understood the conditions. The probation officer testified first that Martinez admitted in January 2011 that he had given an eleven-year-old child a ride on his bicycle without the probation department's permission. Second, the officer testified that Martinez admitted, in May 2011, that he had been arrested and charged with a criminal offense for smashing an ex-girlfriend's phone during an argument (an incident that the probation officer later confirmed with the ex-girlfriend). The probation officer further testified that Martinez was delinquent on his probation service fee payments and had spoken to the probation officer about his financial difficulties but had not petitioned the court for a fee reduction.

¶17 Martinez's counsel cross-examined the probation officer and then Martinez testified on his own behalf. Martinez denied that his ex-girlfriend owned the phone that was damaged and offered no testimony regarding whether he had given a child a ride on his bicycle. He stated that he had financial difficulties and had asked his probation officers about reducing his fees and was told "they would if they can." Martinez's father testified that he was trying to pay Martinez's probation fees but did not have sufficient funds, and Martinez was making some efforts to find employment, but "has not put 100 percent effort."

¶18 The court found that Martinez had violated Conditions 1, 16(b), and 25(1) of his probation. Regarding the violation of Condition 1, the court found that Martinez had damaged a phone that another person had at least a shared interest in. Regarding the violation of Condition 16(b), the court found that Martinez was not making sufficient efforts to secure employment. The court made no specific findings regarding the violation of Condition 25(1).

¶19 The matter proceeded to a disposition hearing at which the court reinstated Martinez's lifetime probation and added special domestic violence conditions. Martinez timely appeals. We have jurisdiction pursuant to Article 6, Section 9 of the

Arizona Constitution, and A.R.S. §§ 12-120.21(A)(1), 13-4031, and 13-4033.

*DISCUSSION*

¶10 The record reveals no fundamental error. The proceedings complied with Ariz. R. Crim. P. 27, and Martinez was present and represented by counsel at all stages.

¶11 The state presented sufficient evidence to support the court's findings that Martinez violated the conditions of his probation. And though the court did not make specific findings of fact regarding Martinez's violation of Condition 25(1), as required by Ariz. R. Crim. P. 27.8(b)(4), this was not fundamental error. With respect to the allegation of that violation, the court was asked to either accept or reject the probation officer's undisputed testimony that Martinez admitted to giving a child a ride on his bicycle. By finding that the state had carried its burden of proof to show a violation of Condition 25(1), the court accepted the officer's testimony and implicitly found that Martinez had initiated or maintained contact with the child. In these circumstances, the court's failure to make an express finding was technical error only. *State v. Alves*, 174 Ariz. 504, 506-07, 851 P.2d 129, 131-32 (App. 1992).

¶12 Martinez was given the opportunity to speak at the disposition hearing, and the court acted within its discretion

under Ariz. R. Crim. P. 27.9(c)(2) to reinstate Martinez's probation with additional conditions.

CONCLUSION

¶13 We have reviewed the record for fundamental error and find none. See *Leon*, 104 Ariz. at 300, 451 P.2d at 881. We therefore affirm.

¶14 Defense counsel's obligations pertaining to this appeal have come to an end. See *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984). Unless, upon review, counsel discovers an issue appropriate for petition for review to the Arizona Supreme Court, counsel must only inform his client of the status of this appeal and his future options. *Id.* Martinez has 30 days from the date of this decision to file a petition for review *in propria persona*. Ariz. R. Crim. P. 31.19(a). Upon the court's own motion, he has 30 days from the date of this decision in which to file a motion for reconsideration.

/s/

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PETER B. SWANN, Presiding Judge

CONCURRING:

/s/

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MICHAEL J. BROWN, Judge

/s/

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JON W. THOMPSON, Judge