

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz.R.Sup.Ct. 111(c); ARCAP 28(c);
Ariz.R.Crim.P. 31.24



DIVISION ONE
FILED: 12/13/2012
RUTH A. WILLINGHAM,
CLERK
BY: mjt

**IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE**

STATE OF ARIZONA,) 1 CA-CR 12-0099
)
Appellee,) DEPARTMENT B
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
JOE GARCIA,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2003-024959-001 DT

The Honorable Jeffrey A. Rueter, Commissioner

AFFIRMED

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

Maricopa County Public Defender Phoenix
By Tennie B. Martin, Deputy Public Defender
Attorneys for Appellant

H O W E, Judge

¶1 Joe Garcia appeals from the trial court's order
reinstating the terms of his probation after a probation

violation. This appeal is filed in accordance with *Anders v. California*, 386 U.S. 738 (1967) and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969). Counsel for Garcia asks this Court to search the record for fundamental error. Garcia was given an opportunity to file a supplemental brief in propria persona, but has not done so. After reviewing the record, we affirm the reinstatement of probation.

FACTS AND PROCEDURAL HISTORY

¶2 We view the facts in the light most favorable to sustaining the superior court's findings. See *State v. Maldonado*, 164 Ariz. 471, 473, 793 P.2d 1138, 1140 (App. 1990).

¶3 Garcia pleaded guilty to one count of attempted child molestation, a class three felony and dangerous crime against children. The plea agreement required that Garcia be placed on lifetime probation and incarcerated for one year. He was also required to register as a sex offender, which required him to abstain from initiating, establishing or maintaining contact with any child under the age of eighteen, including relatives, without approval from the adult probation department.

¶4 Years later, the probation department petitioned to revoke probation, alleging that on December 13, 2011, Garcia violated his probation terms by having unapproved contact with a two-year-old female child. An officer reported to Garcia's home and found Garcia's live-in girlfriend's great granddaughter

inside. After the officer found the child's clothing and personal belongings in a bedroom, Garcia admitted that the child and her mother were currently living with him because they did not have a place to live.

¶15 At the probation violation hearing, a Maricopa County adult probation officer testified that Garcia's previous probation officer reviewed the terms of Garcia's probation with him, including the requirement that he not have contact with minor children. Next, an adult probation surveillance officer testified that she went to Garcia's home and found a two-year-old child eating at the kitchen table. When the officer walked through Garcia's home, she found children's clothing and toys. The officer asked Garcia's wife about the child's presence, and she responded that she knew the child was not supposed to be there, but she was going to let the child and her mother stay for a few days because they had nowhere to go. The officer testified that Garcia did not have permission from the probation department to have a child in his home. Garcia testified that when the surveillance officer came to his home, he was not aware that the child was present. He also testified that the toys and clothing were in the home because they were going to be put in storage.

¶16 After presentation of the evidence and argument, the court found by a preponderance of the evidence that Garcia

violated term 25.1 of his probation, requiring that he not maintain contact with children under the age of eighteen. The court reinstated Garcia to lifetime probation with sex offender status.

DISCUSSION

¶7 Garcia's counsel has advised this Court that after a diligent search of the entire record, she has found no arguable question of law. We have read and considered counsel's brief and fully reviewed the record for reversible error. *See Leon*, 104 Ariz. at 300, 451 P.2d at 881. We find none.

¶8 A probation violation must be established by a preponderance of the evidence. Ariz. R. Crim. P. 27.8(b)(3). We uphold a trial court's finding of a probation violation "unless it is arbitrary or unsupported by any theory of evidence." *State v. Moore*, 125 Ariz. 305, 306, 609 P.2d 575, 576 (1980). The trial court conducted the probation violation hearing in compliance with Garcia's constitutional rights and Rule 27 of the Arizona Rules of Criminal Procedure. The record and evidence presented at the hearing supported the court's findings. We decline to order briefing and we affirm the imposition of probation.

¶9 Upon the filing of this decision, defense counsel shall inform Garcia of the status of his appeal and of his future options. Defense counsel has no further obligations

unless, upon review, counsel finds an issue appropriate for submission to the Arizona Supreme Court by petition for review. See *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984). Garcia shall have thirty days from the date of this decision to proceed, if he desires, with a pro per motion for reconsideration or petition for review. On the Court's own motion, we extend the time for Garcia to file a pro per motion for reconsideration to thirty days from the date of this decision.

CONCLUSION

¶10 We affirm.

_____/s/_____
RANDALL M. HOWE, Judge

CONCURRING:

_____/s/_____
MAURICE PORTLEY, Presiding Judge

_____/s/_____
PATRICIA A. OROZCO, Judge