

NOTICE: NOT FOR PUBLICATION.
UNDER ARIZ. R. SUP. CT. 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

STATE OF ARIZONA, *Appellee*,

v.

DANIEL JOHN WYATT, *Appellant*.

No. 1 CA-CR 13-0356

FILED 11-14-2013

Appeal from the Superior Court in Maricopa County

CR2009-173829-001

The Honorable J. Justin McGuire, Judge

AFFIRMED

COUNSEL

Arizona Attorney General's Office, Phoenix

By Joseph T. Maziarz

Counsel for Appellee

Maricopa County Public Defender's Office, Phoenix

By Paul J. Prato

Counsel for Appellant

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MEMORANDUM DECISION

Judge John C. Gemmill delivered the decision of the Court, in which Presiding Judge Maurice Portley and Judge Kent E. Cattani joined.

G E M M I L L, Judge:

¶1 Defendant Daniel John Wyatt appeals from the revocation of his probation, and the ensuing sentence, on a conviction of aggravated driving or actual physical control while under the influence of intoxicating liquor or drugs. Wyatt’s counsel filed a brief in compliance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), stating that he has searched the record and found no arguable question of law and requesting that this court examine the record for reversible error. Wyatt was afforded the opportunity to file a *pro se* supplemental brief but did not do so. See *State v. Clark*, 196 Ariz. 530, 537, ¶ 30, 2 P.3d 89, 96 (App. 1999). For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 “We view the facts and all reasonable inferences therefrom in the light most favorable to sustaining the convictions.” *State v. Powers*, 200 Ariz. 123, 124, ¶ 2, 23 P.3d 668, 669 (App. 2001).

¶3 In 2010, Wyatt pled guilty to aggravated driving or actual physical control while under the influence of intoxicating liquor or drugs, a non-dangerous and non-repetitive class 4 felony for an April 2009 incident. He was sentenced in August 2010 to four months imprisonment followed by four years of probation under Arizona Revised Statutes (“A.R.S.”) sections 28-1381(A)(1), 28-1383(A)(1), 28-3001, 28-3304, 28-3305, 28-3315, 28-1383(J), 28-1444, 28-1461, 13-701, 13-702, 13-702.01, and 13-801. His terms of probation were modified in June 2011 to include serving six months in jail followed by the four years of probation.

¶4 In March 2012, the State filed a petition to revoke probation for failure to comply with several terms of probation. The court modified Wyatt’s conditions of probation later that month to include five years of probation with a revised expiration date in December 2016 and an additional 60 days in jail. In July 2012, Wyatt failed to appear at a DUI Court status hearing and the State again filed a petition to revoke

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probation for failure to comply with several terms of probation. The court issued a bench warrant for the probation violation.

¶5 Wyatt was arrested in December 2012 for probation violation. He denied the alleged violations and was released on bail mid-month. He was arrested again in February 2013 for violating the terms of his probation by failing to contact his probation officer after his February 19 court hearing. The probation officer testified that Wyatt was required to call her that day but was not in contact for several days. Wyatt has not disputed that point. The State filed a supplemental petition to revoke probation with multiple additional alleged probation violations, including the failure to report on Feb. 19.

¶6 In an April 30, 2013, witness violation hearing, a judge found that the State proved by a preponderance of evidence that Wyatt violated the terms and conditions of his probation by failing to report on February 19. The judge dismissed the remaining allegations in the petition to revoke probation. Wyatt waived his right to a disposition hearing and a written probation violation report and opted to proceed directly into the disposition hearing.

¶7 In the disposition hearing, defense counsel questioned the probation officer witness and addressed the court regarding mitigating factors. Wyatt also addressed the court at length. The judge revoked Wyatt's probation and ordered him committed to the Arizona Department of Corrections for a term of two years, with credit for 461 days of prior incarceration. The judge took into account Wyatt's failure to comply with the terms of his probation despite three opportunities at probation and multiple interventions by the DUI Court, the public safety issue of his continued driving under the influence, his history showing what the judge saw as no reasonable possibility of success on probation, and the fact that this was Wyatt's third petition to revoke and three years of probation remained. The judge also considered mitigating circumstances, including the length of time Wyatt spent on probation, the fact that Wyatt made some efforts on probation, Wyatt's significant substance abuse issues, and Wyatt's possible mental health issues, and he imposed a term of imprisonment that is less than the presumptive sentence.¹ Wyatt was

¹ Aggravated driving or actual physical control while under the influence of intoxicating liquor or drugs is a class 4 felony with a presumptive sentence of 2.5 years and a minimum sentence of 1.5 years. A.R.S. §§ 28-

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present at all hearings throughout the revocation proceeding, although he appeared late for the February non-witness violation hearing. He was represented by the Maricopa County Public Defender's Office for the bulk of the revocation proceedings. On March 21, 2013, he waived his right to counsel and elected to proceed in propria persona. He again requested appointment of counsel on April 15, 2013, and the Public Defender's Office was reappointed to represent him for the remaining proceedings.

¶8 Wyatt timely appealed the revocation of probation, and we have jurisdiction under A.R.S. §§ 12-120.21 and 13-4033.

DISCUSSION

¶9 Having considered defense counsel's brief and examined the record for reversible error, *see Leon*, 104 Ariz. at 300, 451 P.2d at 881, we find none. The evidence presented supports the revocation of probation, and the sentence imposed falls within the range permitted by law. As far as the record reveals, Wyatt either was represented by counsel or was proceeding in propria persona after waiving counsel at all stages of the proceedings, and these proceedings were conducted in compliance with his constitutional and statutory rights and the Arizona Rules of Criminal Procedure.

¶10 Pursuant to *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984), counsel's obligations in this appeal have ended. Counsel need do no more than inform Wyatt of the disposition of the appeal and his future options, unless counsel's review reveals an issue appropriate for submission to the Arizona Supreme Court by petition for review. Wyatt has 30 days from the date of this decision in which to proceed, if he desires, with a *pro se* motion for reconsideration or petition for review.

CONCLUSION

¶11 The revocation of probation and sentence are affirmed.



1381(A)(1), -1383(A)(1), -1383(L), 13-701, -702.