

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



DIVISION ONE
FILED: 04-15-2010
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BY: GH

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,)
) No. 1 CA-CR 09-0012
)
 Appellee,) DEPARTMENT E
)
 v.) **MEMORANDUM DECISION**
)
 RICHARD LUCERO,) (Not for Publication -
) Rule 111, Rules of the
 Appellant.) Arizona Supreme Court)
)
)

Appeal from the Superior Court in Navajo County

Cause No. CR 2006-0257
CR 2007-0565

The Honorable Dale P. Nielson, Judge

AFFIRMED

Terry Goddard, Arizona Attorney General Phoenix
by Kent E. Cattani, Chief Counsel,
Criminal Appeals/Capital Litigation Section
Attorneys for Appellee

Law Office of Marsha Gregory, P.C. Phoenix
by Marcha A. Gregory
Attorneys for Appellant

H A L L, Judge

¶1 Richard Lucero appeals from the revocation of his probation and the sentences imposed.

¶2 Defendant's appellate counsel filed a brief in accordance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), advising that, after a diligent search of the record, she was unable to find any arguable grounds for reversal. This court granted defendant an opportunity to file a supplemental brief, which he has not done. See *State v. Clark*, 196 Ariz. 530, 537, ¶ 30, 2 P.3d 89, 96 (App. 1999).

¶3 We review for fundamental error, error that goes to the foundation of a case or takes from the defendant a right essential to his defense. See *State v. King*, 158 Ariz. 419, 424, 763 P.2d 239, 244 (1988). We view the evidence presented in a light most favorable to sustaining the verdict. *State v. Cropper*, 205 Ariz. 181, 182, ¶ 2, 68 P.3d 407, 408 (2003). Finding no reversible error, we affirm.

I. Cause NO. CR 2006-0257

¶4 On March 24, 2006, defendant was charged by information with two counts of possession of a narcotic drug for sale (Counts I and II), class two felonies, in violation of Arizona Revised Statutes (A.R.S.) section 13-3408(A)(2) (2010), one count of possession of a dangerous drug for sale (Count

III), a class two felony, in violation of A.R.S. § 13-3407(A)(2) (2010), and one count of possession of drug paraphernalia (Count IV), a class six felony, in violation of A.R.S. § 13-3415(A) (2010). On December 11, 2006, defendant pled guilty to Counts I and IV and the State dismissed Counts II and III.

¶7 On January 12, 2007, the trial court sentenced defendant to four years of intensive probation. As a term of probation, defendant was sentenced to twelve months in the Navajo County Jail with nineteen days of presentence incarceration credit.

II. Cause No. CR 2007-0565

¶8 On May 24, 2007, defendant was charged by indictment with one count of possession of dangerous drugs (Count I), a class four felony, in violation of A.R.S. § 13-3407(A)(1) (2010); one count of possession of marijuana (less than two pounds) (Count II), a class six felony, in violation of A.R.S. § 13-3405(A)(1), (B)(4) (2010); and one count of possession of drug paraphernalia (Count III), a class six felony, in violation of A.R.S. § 13-3415(A) (2010). Defendant pled guilty to Count I and the remaining charges were dismissed. On August 17, 2007, defendant was sentenced to four years of intensive probation.

III. Petitions to Revoke

¶9 On April 3, 2008, the State filed a Petition to Revoke Probation in CR2007-0565 alleging defendant tested positive for

dangerous drugs, marijuana, methamphetamine, and alcohol on multiple occasions. On July 29, 2008, the State filed a Petition to Revoke intensive Probation in CR2006-0257 alleging the same probation violations as those set forth in the April 3, 2008 petition to revoke.

¶15 On November 14, 2008, the trial court held a consolidated hearing on both petitions to revoke probation. The matter was submitted on the record, which consisted of seven urinalysis lab reports reflecting that defendant tested positive for methamphetamine and marijuana on several occasions. The trial court then found defendant violated his probation by testing positive for dangerous drugs. At disposition, the court sentenced defendant to a mitigated term of four years on Count I and six months time served for Count IV in CR2006-0257. In CR2007-0565, the court sentenced defendant to the presumptive term of two and one-half years in prison with 51 days of presentence incarceration credit. Pursuant to the parties' stipulation, the court further ordered all sentences to run concurrently.

¶16 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. All of the proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure. Defendant was given an opportunity to

speak before sentencing, and the sentences imposed were within statutory limits. Furthermore, based on our review of the record, there was sufficient evidence for the trial court to find that defendant violated his probation.

¶7 After the filing of this decision, counsel's obligations pertaining to defendant's representation in this appeal have ended. Counsel need do no more than inform defendant of the status 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. *See State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984). Defendant has thirty days from the date of this decision to proceed, if he desires, with a pro per motion for reconsideration or petition for review. Accordingly, defendant's convictions and sentences are affirmed.

/s/
PHILIP HALL, Judge

CONCURRING:

/s/
SHELDON H. WEISBERG, Presiding Judge

/s/
JOHN C. GEMMILL, Judge