

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: 04/29/10
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IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) No. 1 CA-CR 09-0432
)
Appellee,) DEPARTMENT C
)
) **MEMORANDUM DECISION**
)
v.)
) (Not for Publication -
) Rule 111, Rules of the
DOUGLAS KEITH SPRATLEY,) Arizona Supreme Court)
)
Appellant.)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2007-143788-001 SE

The Honorable Sheila A. Madden, Judge *Pro Tempore*

AFFIRMED

Terry Goddard, Arizona 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 Joel M. Glynn, Deputy Public Defender
Attorneys for Appellant

B R O W N, Judge

¶1 Douglas Keith Spratley appeals the superior court's order revoking his probation and the related disposition sentence. Counsel for Spratley filed a brief in accordance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 300-01, 451 P.2d 878, 881-82 (1969). Finding no arguable issues to raise, counsel requests that this court search the record for fundamental error. Spratley was given the opportunity to file a supplemental brief *in propria persona*, but did not do so.

¶2 We review the superior court's determination that a defendant violated his probation for an abuse of discretion. See *State v. LeMatty*, 121 Ariz. 333, 335-36, 590 P.2d 449, 451-52 (1979). Accordingly, we will only reverse the court's finding that the defendant violated his probation if it is "arbitrary and unsupported by any reasonable theory of evidence." *Id.* at 336, 590 P.2d at 452 (citation omitted). Finding no reversible error, we affirm.

¶3 In October 2007, Spratley was placed on two years unsupervised probation. Two months later, his probation officer filed a petition to revoke, alleging Spratley violated three conditions of his probation by committing the crime of disorderly conduct, associating with a person having a criminal record, and failing to report contact with law enforcement.

Spratley denied the allegations and the court scheduled the matter for a witness violation hearing. Prior to the presentation of evidence at the hearing, Spratley's probation officer submitted a supplemental petition to revoke probation, alleging Spratley violated four additional terms of his probation by possessing or using amphetamine, an illicit drug; consuming alcohol; failing to pay probation fees as ordered; and failing to participate in counseling pertaining to substance abuse as directed.

¶4 The court recognized that Spratley had not been arraigned on the allegations in the supplemental petition and asked him if he wished to proceed or set an additional hearing the following week. Spratley agreed to proceed with an evidentiary hearing on both matters. Evidence was presented showing that Spratley acknowledged receipt of the conditions of his probation and that he had tested positive for drugs, he consumed alcohol, and he failed to participate in substance abuse treatment. The court found that Spratley violated the terms of his probation. At the disposition hearing, the court reinstated probation for two years. Spratley timely appealed.

¶5 This court has reviewed the entire record for fundamental error and has found none. See *Leon*, 104 Ariz. at 300, 451 P.2d at 881. The probation revocation proceedings were conducted in compliance with the Arizona Rules of Criminal

Procedure, with the exception of the time requirements for making an initial appearance in regard to the allegations in the supplemental petition, which Spratley waived. See Ariz. R. Crim. P. 4.1. Spratley was represented by counsel at all stages of the proceedings and was given the opportunity to speak at the disposition hearing. His disposition sentence was within the statutory limits.

¶16 Accordingly, we affirm the trial court's judgment finding Spratley in violation of his probation and the resulting disposition. Upon the filing of this decision, counsel shall inform Spratley of the status of the appeal and his 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). Spratley shall have thirty days from the date of this decision to proceed, if he so desires, with a pro per motion for reconsideration or petition for review.

/s/

MICHAEL J. BROWN, Judge

CONCURRING:

/s/

PATRICK IRVINE, Presiding Judge

/s/

DONN KESSLER, Judge