

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: 01/21/2010  
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BY: GH

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

STATE OF ARIZONA, ) 1 CA-CR 09-0518  
)  
Appellee, ) DEPARTMENT D  
)  
v. ) **MEMORANDUM DECISION**  
) (Not for Publication -  
GRANT MILTON ANDERSON, ) Rule 111, Rules of the  
) Arizona Supreme Court)  
Appellant. )  
)

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Appeal from the Superior Court in Mohave County

Cause No. CR2006-1747

The Honorable Steven F. Conn, Judge

**AFFIRMED**

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Terry Goddard, Attorney General	Phoenix
by Kent E. Cattani, Chief Counsel	
Criminal Appeals/Capital Litigation Section	
Attorneys for Appellee	
Mohave County Appellate Defender	Kingman
by Jill Evans	
Attorneys for Appellant	
Grant Milton Anderson	Buckeye
Appellant	

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**I R V I N E**, Judge

¶1 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 Grant Milton Anderson ("Anderson"), asks this court to search the record for fundamental error. Anderson was given an opportunity to file a supplemental brief in propria persona. Anderson has done so. After reviewing the record, we affirm Anderson's probation revocation and disposition of sentence.

#### FACTS AND PROCEDURAL HISTORY

¶2 Anderson appeals from his probation revocation and disposition sentence. Anderson previously pled guilty to burglary in the second degree, a class 3 felony, and was sentenced to three years probation.<sup>1</sup> Term 3 of the conditions of

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<sup>1</sup> Anderson initially entered into a plea agreement before the Honorable Robert Moon. After the plea, he moved to withdraw the plea agreement, arguing that his counsel forced him into it. Judge Moon later recused himself from the case, based on his familiarity with the victim's family. He had previously offered to do so but also stated he could be fair and impartial. Anderson argued that he wanted Judge Moon to recuse himself but Anderson's attorney, Randolph Wolfson, said no. Wolfson later withdrew as Anderson's attorney due to communication breakdown.

Judge Conn was assigned to the case. He ordered a Rule 11 evaluation of Anderson, who had been declared incompetent in a 1996 Maricopa County case. Anderson refused to undergo the evaluation and no evaluation was ever completed. After hearing arguments at sentencing, Judge Conn denied the motion to withdraw Anderson's guilty plea, finding that Anderson knowingly, voluntarily, and intelligently entered into the plea agreement. Counsel Jill Evans was appointed to represent Anderson on this appeal from the probation revocation hearing only.

probation required Anderson to “[r]eport to [the Adult Probation Department] within 72 hours of sentencing [October 3, 2007], absolute discharge from prison, release from incarceration or residential treatment, and continue to report as directed.” Term 12 required Anderson to “[n]ot leave the state [AZ] without prior permission of the [Adult Probation Department].” Term 23 provided that Anderson, a resident of California, would be “permitted to apply for Interstate Compact supervision in the state of California.” Anderson received, acknowledged, and signed the probation conditions document.

¶3 The probation officer filed a petition to revoke probation on January 4, 2008, alleging that Anderson violated term 3 by failing to report to the Adult Probation Department between December 17, 2007 and December 27, 2007, as directed by the officer. The petition also alleged that Anderson violated term 12 by traveling to the State of California, on or between October 5, 2007 and December 17, 2007, without prior written permission. Moreover, it alleged that Anderson “failed to return to the State of Arizona as directed; in violation of his probation and the Interstate Compact Agreement.” A bench warrant was issued for his arrest. He was arrested in California and extradited to Arizona.

¶4 After two continuances based on a “conflict in [the court’s] calendar,” the parties reconvened before Judge Conn on

April 30, 2009. On that date, Anderson was "removed from the courtroom by Detention Officers for disorderly conduct" before the hearing began. Therefore, the hearing took place without him. Anderson's counsel, Sandra Carr from the Legal Defender's Office, had recently been appointed and asked the court for a continuance to review materials before the hearing. Anderson requested a different attorney and judge. Judge Conn continued the contested probation revocation hearing to May 8, 2009.

¶15 On May 8, 2009, the court held the probation revocation hearing. Defense counsel renewed a request for a Rule 11 evaluation of Anderson which was denied by the court based on Anderson's refusal to cooperate with the evaluation. Anderson requested a change of counsel and the court allowed him to state his reasons on the record. Judge Conn responded, "I am convinced, Mr. Anderson that you would probably not be satisfied with anyone that I appointed to represent you[,] " to which Anderson responded, "[t]rue." Judge Conn denied the motion.

¶16 The probation officer, M.R., testified that she met with Anderson the day after he was sentenced. She told him he could not travel to California until she confirmed a California address to transfer probation. Anderson gave her his sister's address and phone number. M.R. telephoned his sister who said that "under no circumstances" could Anderson live with her. M.R. testified that she told him "on multiple occasions" that he

could not go to California until he had an established residence there.

¶7 M.R. did not have contact with Anderson until November 13, 2007, when he called her to say that he was living in California with his sister and asked her to complete the interstate compact paperwork to transfer probation. M.R. applied for transfer of his probation despite him not having permission to be in California.

¶8 On November 28, 2007, she received notice from the California probation department that they could not complete the transfer because Anderson did not have permission to be in California. She sent a certified letter to Anderson's post office box and to his sister's address stating that he had ten days from receipt of the letter to return to Arizona. M.R. received certified receipts from Jordan Anderson and Appellant at each address, respectively.

¶9 Anderson did not report to probation or return to Arizona until he was extradited on a bench warrant issued for the probation violation. Anderson testified on his own behalf at the probation revocation hearing.

¶10 After hearing testimony and arguments, the court determined the allegations were proven by a preponderance of the evidence and revoked Anderson's probation. The court denied Anderson's counsel's request for an Arizona Rule of Criminal

Procedure 26.5 mental evaluation after Anderson agreed he would not cooperate with the evaluation.

¶11 The trial court conducted the sentencing hearing in compliance with Anderson's constitutional rights and Rule 26 of the Arizona Rules of Criminal Procedure. The trial court found the lack of financial loss by the victim and Anderson's potential mental health issues to be substantially mitigating factors. It found Anderson's prior criminal record to be an aggravating factor. The court sentenced Anderson to the substantially mitigated term of two years in prison with credit for 456 days presentence incarceration.

#### DISCUSSION

¶12 We exercise jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") §§ 12-120.21(A)(1) (2003); 13-4031 (2001); and 13-4033(A)(1) (Supp. 2009).<sup>2</sup> We review Anderson's conviction and sentence for fundamental error. *See State v. Gendron*, 168 Ariz. 153, 155, 812 P.2d 626, 628 (1991).

¶13 Counsel for Anderson has advised this court that after a diligent search of the entire record, she has found no arguable question of law. Anderson's supplemental brief incorporates a separately filed Motion for Appointment of Counsel re: Anders filing, Motion for Summary Judgment, and

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<sup>2</sup> We cite the current version of the applicable statute because no revisions material to this decision have since occurred.

Motion for Extension of Time to File Additional Anders-Related Transcripts, and he renews an ineffective assistance of counsel claim. We reject each of these motions. Counsel has been assigned, so that motion is moot. This court does not grant summary judgment so his motion requesting such relief is improper. It also appears to us that we have the record of the trial court proceeding, so there is no need for further transcripts. Finally, a defendant may only bring ineffective assistance of counsel claims in Rule 32 post-conviction proceedings. *State v. Spreitz*, 202 Ariz. 1, 3, ¶ 9, 39 P.3d 525, 527 (2002).

¶14 Anderson's supplemental brief also includes a "Petition to File Belated Petition for Review of Summary Denial of Petition for Post-Conviction Relief[," which we deny as untimely. In his supplemental brief, Anderson also airs grievances about prison food and facilities. These complaints are neither properly before us nor relevant to our review of the record for fundamental error relating to his probation revocation.

¶15 The court has 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. All of the probation revocation proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure. So far as the

record reveals, Anderson was represented by counsel at all stages of the probation revocation proceedings, with the exception of one continuance hearing, and the sentence imposed was within the statutory limits. Although the record is incomplete regarding the dates on which Anderson was re-incarcerated and released from custody, we must presume the trial court correctly credited Anderson with 456 days of credit. See *State v. Scott*, 187 Ariz. 474, 476, 930 P.2d 551, 553 (App. 1996) ("Even if a trial record is incomplete, we must assume that it supports the judgment unless there is 'at least a credible and unmet allegation of reversible error.'" ) (citation omitted).<sup>3</sup> We decline to order briefing and we affirm Anderson's conviction and sentence.

¶16 Upon the filing of this decision, defense counsel shall inform Anderson 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-

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<sup>3</sup> At sentencing, Judge Conn stated that he "reviewed this file for about an hour last night and I am absolutely convinced that there is an enormous amount of credit for time served, first of all, that the defendant did not get when I first sentenced him [for the burglary conviction]." He explained that the original count of 145 days "ignore[d] two times that he was in custody" and proceeded to correct the credit count. Both attorneys agreed that 456 days was the correct amount.



57 (1984). Anderson 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 Anderson to file a pro per motion for reconsideration to thirty days from the date of this decision.

**CONCLUSION**

¶17 We affirm.

/s/

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PATRICK IRVINE, Judge

CONCURRING:

/s/

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JOHN C. GEMMILL, Presiding Judge

/s/

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JON W. THOMPSON, Judge