

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: 02/04/2010  
PHILIP G. URRY, CLERK  
BY: GH

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

STATE OF ARIZONA, ) 1 CA-CR 09-0565  
)  
Appellee, ) DEPARTMENT B  
)  
v. ) **MEMORANDUM DECISION**  
) (Not for Publication - Rule  
JESUS O. ROJO, ) 111, Rules of the Arizona  
) Supreme Court)  
Appellant. )  
)

Appeal from the Superior Court in Maricopa County

Cause No. CR 2001-000135

The Honorable Christine E. Mulleneaux, Judge Pro Tempore

**AFFIRMED**

Terry Goddard, 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 Christopher V. Johns, Deputy Public Defender  
Attorneys for Appellant

**N O R R I S**, Judge

¶1 Jesus O. Rojo appeals from his probation revocation and disposition sentence. After searching the record on appeal and finding no arguable question of law that was not frivolous, Rojo's 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), asking this court to search the record for fundamental error. This court granted counsel's motion to allow Rojo to file a supplemental brief *in propria persona*, but Rojo chose not to do so. After reviewing the entire record, we find no fundamental error and, therefore, affirm Rojo's probation revocation and disposition sentence.

#### FACTS AND PROCEDURAL BACKGROUND<sup>1</sup>

¶12 Rojo previously pled guilty to attempted sexual conduct with a minor and dangerous crime against children in the second degree, a class three nondangerous and nonrepetitive felony.<sup>2</sup> The superior court suspended imposition of sentence and placed Rojo on lifetime probation with special sex offender conditions.

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<sup>1</sup>In a probation revocation hearing, the State must establish by a preponderance of the evidence an individual has violated the terms of his probation. Ariz. R. Crim. P. 27.8(b)(3). We review the superior court's determination 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, this court will only reverse the superior court's factual finding the defendant violated his probation if the finding is "arbitrary and unsupported by any reasonable theory of evidence." *Id.* at 336, 590 P.2d at 452.

<sup>2</sup>On April 20, 2001, Rojo entered into a plea agreement in which he pled guilty to (1) attempted child molestation and dangerous crime against children in the second degree (count one), and (2) the offense at issue in this appeal (count two). The superior court imposed incarceration on count one, which is not at issue in this appeal.

¶13 On June 25, 2008, Rojo admitted to violating the terms of his probation pursuant to a petition to revoke his probation. The superior court suspended imposition of sentence and reinstated lifetime probation, again with special sex offender conditions.

¶14 On March 26, 2009, Rojo's probation officer filed a petition to revoke probation alleging Rojo had violated term three ("continue to report as directed" to his probation officer), term four (obtain approval before changing his residence), term 16 (pay his probation fees), term 22 (register as a sex offender), and term 25.7 (obtain the advance written approval of his probation officer for "[a]ny temporary or permanent changes to residence, employment, and education," a special condition applicable to sex offenders).

¶15 On May 27, 2009, the superior court held a witness violation hearing in which Rojo's probation officer, a surveillance officer, and Rojo testified. At the conclusion of the hearing, the superior court found the State had proven by a preponderance of the evidence Rojo had violated terms three, four, 16, 22, and 25.7.<sup>3</sup>

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<sup>3</sup>Although the hearing transcript shows the superior court clearly found Rojo violated term 22, the minute entry does not recite this violation. When there is a discrepancy between the oral sentence and a minute entry, a reviewing court must try to ascertain the superior court's intent by reference to the

¶16 At the disposition hearing on July 6, 2009, the superior court suspended imposition of sentence and reinstated Rojo on lifetime probation. The court also imposed additional conditions including intensive probation.

#### DISCUSSION

¶17 We have reviewed the entire record for reversible error and find 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. Rojo was represented by counsel at all stages of the probation revocation proceedings and was given the opportunity to speak at the disposition hearing. Rojo's sentence was within the statutory limits.

#### CONCLUSION

¶18 For the foregoing reasons, we decline to order briefing and affirm Rojo's probation violation and disposition sentence.

¶19 After the filing of this decision, defense counsel's obligations pertaining to Rojo's representation in this appeal have ended. Defense counsel need do no more than inform Rojo of the outcome of this appeal and his future options, unless, upon review, counsel finds an issue appropriate for submission to the

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record. *State v. Stevens*, 173 Ariz. 494, 496, 884 P.2d 661, 663 (App. 1992).

Arizona Supreme Court by petition for review. *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984).

¶10 Rojo has 30 days from the date of this decision to proceed, if he wishes, with an *in propria persona* petition for review. On this court's own motion, we also grant Rojo 30 days from the date of this decision to file an *in propria persona* motion for reconsideration.

/s/

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PATRICIA K. NORRIS, Presiding Judge

CONCURRING:

/s/

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SHELDON H. WEISBERG, Judge

/s/

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MARGARET H. DOWNIE, Judge