

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  
PHILIP G. URRY, CLERK  
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IN THE  
COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

STATE OF ARIZONA, )  
 )  
 Appellee, ) 1 CA-CR 09-0714  
 )  
 v. ) DEPARTMENT E  
 )  
 KENNETH EARL DOLLAR, ) MEMORANDUM DECISION  
 ) (Not for Publication -  
 ) Rule 111, Rules of the  
 Appellant. ) Arizona Supreme Court)  
 )  
 \_\_\_\_\_ )

Appeal from the Superior Court of Maricopa County

Cause No. CR2006-163964-002 DT

The Honorable Christine E. Mulleneaux, Judge *Pro Tempore*

**AFFIRMED**

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

James Haas, Maricopa County Public Defender  
by Stephen R. Collins, Deputy Public Defender  
Attorneys for Appellant Phoenix

**WEISBERG**, Judge

¶1 Kenneth Earl Dollar ("Defendant") appeals from the trial court's order finding that he violated a term of his probation, suspending imposition of sentence and continuing him on probation for twelve months with deferred jailed time of two months.

¶2 Defendant's counsel has filed a brief in accordance with *Anders v. California*, 386 U.S. 738, 744 (1967), and *State v. Leon*, 104 Ariz. 297, 299, 451 P.2d 878, 880 (1969), advising this court that after a search of the entire record on appeal, he finds no arguable ground for reversal. This court granted Defendant an opportunity to file a supplemental brief, but none was filed. Counsel now requests that we search the record for fundamental error. *Anders*, 386 U.S. at 744; *State v. Clark*, 196 Ariz. 530, 537, ¶ 30, 2 P.3d 89, 96 (App. 1999).

¶3 We have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1) (2003), 13-4031 (2001), and 13-4033 (A) (2001). Finding no reversible error, we affirm.

#### **BACKGROUND**

¶4 In 2007, Defendant pled guilty to possession of drug paraphernalia. He was placed on probation for a term of eighteen months. In 2008, after a petition to revoke probation was filed, Defendant admitted to violating a term of probation. He was reinstated on probation for a term of eighteen months, with a revised expiration date of May 6, 2009. On April 1, 2009, a second petition to revoke probation was filed alleging several violations, including Term Number 24, namely, that "Defendant failed to participate and cooperate in counseling or assistance as directed by the [probation department] pertaining to substance abuse." Defendant denied the allegations in the petition to revoke.

¶15 At a witness violation hearing, Defendant's present probation officer, Paul Anderson, testified that he directed Defendant to drug treatment counseling at New Horizons Counseling Service, Inc. beginning on August 11, 2008 and again in September 2008. Anderson received a report from New Horizons dated December 22, 2008, stating that Defendant was discharged from the program due to four absences. Anderson testified that Defendant missed "a couple of sessions" in September due to leg or knee surgery, but that he started again at New Horizons at the end of October.

¶16 During an office visit on February 17, 2009, Anderson told Defendant that he had to go back into treatment. Defendant said he was doing everything he was supposed to do, but indicated he would report back to New Horizons. Anderson told Defendant to return to his office the next day, but Defendant failed to do so. At an office visit on March 2, 2009, Defendant told Anderson he did not report to him on February 18 because "he was too angry after [their] last conversation." Anderson stated that Defendant did not start drug counseling treatment the following week as promised. Defendant did not testify at the violation hearing.

¶17 The court found that Defendant violated Term Number 24 of his probation and dismissed the remaining allegations of the petition to revoke. The presentence report writer recommended revoking Defendant's probation and imposing a presumptive term of imprisonment. At the disposition hearing, however, the judge

determined that Defendant had the ability to successfully complete probation and drug treatment. She reinstated Defendant on probation for twelve months with a revised expiration date of September 2, 2010, ordered a deferred jail term of two months beginning on February 1, 2010 until April 1, 2010, and indicated that she wanted Defendant to receive in-patient drug treatment. Defendant timely appealed from the judgment.

#### CONCLUSION

¶18 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. So far as the record reveals, defendant was represented by counsel at all stages of the proceedings, the sentence imposed was within the statutory limits and there was sufficient evidence to find that Defendant violated Term Number 24 of his probation.

¶19 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 of Defendant's 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). On the court's own

motion, Defendant has thirty days from the date of this decision to proceed, if he desires, with a motion for reconsideration or petition for review *in propria persona*.

¶10 Accordingly, we affirm the judgment of the trial court finding Defendant in violation of his probation and reinstating him on probation on the terms and conditions set forth therein.

      /S/        
SHELDON H. WEISBERG,  
Presiding Judge

CONCURRING:

      /S/        
PHILIP HALL, Judge

      /S/        
JOHN C. GEMMILL, Judge