

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
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IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) 1 CA-CR 09-0728
) 1 CA-CR 09-0732
Appellee,) (Consolidated)
)
v.) DEPARTMENT D
)
RODNEY LEE HALE, JR.,) **MEMORANDUM DECISION**
) (Not for Publication -
Appellant.) Rule 111, Rules of the
_____) Arizona Supreme Court)

Appeal from the Superior Court of Maricopa County

Cause Nos. CR2008-104900-001 SE
CR2008-163510-001 SE

The Honorable Frank A. Johnson, Jr., Judge Pro Tempore

AFFIRMED

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

James J. Haas, Maricopa County Public Defender Phoenix
By Louise Stark, Deputy Public Defender
Attorneys for Appellant

T H O M P S O N, Judge

¶1 Rodney Lee Hale Jr. (defendant) appeals from the court's finding of two probation violations and the related

disposition. Defendant's counsel filed a brief in compliance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), stating that after searching the entire record, she has found no arguable questions of law and has filed a brief requesting this court to conduct an *Anders* review of the record. Defendant has been afforded an opportunity to file a supplemental brief *in propria persona*, and he has not done so. For reasons that follow, we affirm.

FACTUAL AND PROCEDURAL HISTORY

1. CR2008-104900

¶2 In January 2008, defendant was indicted on one count of possession or use of marijuana, a class 6 felony. Defendant entered into a plea agreement wherein he agreed to plead guilty to one count of possession of marijuana, a class 1 misdemeanor. The court entered a guilty judgment against defendant and suspended the imposition of sentence, placing defendant on unsupervised probation for a term of one year to begin on February 7, 2008.

2. CR2008-163501

¶3 In October 2008, defendant was indicted on one count of possession or use of marijuana, a class 6 felony; and one count of possession of drug paraphernalia, a class 6 felony. Defendant entered into a plea agreement wherein he agreed to

plead guilty to one count of possession of marijuana, a class 1 misdemeanor. The court entered a guilty judgment against defendant and suspended the imposition of sentence, placing defendant on supervised probation for a term of one year to begin on December 5, 2008.

¶4 Due to defendant's guilty plea in CR2008-163510, he violated his terms of probation in CR2008-104900. Accordingly, the court continued defendant on supervised probation beginning on December 5, 2008 with a revised expiration date of February 7, 2010.

¶5 In May 2009, probation officer G.H. filed a petition to revoke defendant's probation on both CR2008-104900 and CR2008-163501, alleging that defendant had violated various terms of his probation. The court conducted a witness violation hearing in both cases on September 9, 2009. At the hearing, G.H. testified that defendant failed to report on May 19, 2009. G.H. also testified that urine samples provided by defendant in January and February 2009 tested positive for marijuana. As a result, the court found defendant violated terms 3 and 7 of his probation.

¶6 The court continued defendant on probation and revised the probation expiration date for CR2008-104900 by two days, to February 9, 2010. With respect to CR2008-163501, the court

extended defendant's probation expiration date to May 8, 2010. The court also imposed a deferred jail sentence of thirty days, to begin on January 15, 2010 and end on February 15, 2010.¹ Defendant timely appealed. We have jurisdiction pursuant to Article 6, Section 9 of the Arizona Constitution and Arizona Revised Statutes (A.R.S.) §§ 12-120.21(A)(1) (2003), 13-4031 and -4033(A)(1) (2010).

Discussion

¶7 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 and the disposition was within the trial

¹ The record is unclear as to whether defendant actually served the deferred jail sentence, although defendant's counsel's opening brief states that a new probation violation petition was filed in December 2009. [OB at 5-6] The trial court incorrectly calculated the number of days between January 15 and February 15, but we recognize the court's intent was a deferred sentence of thirty days, not thirty-one days. In any event, because these dates have passed, we find any error relating to the court's calculation of the deferred jail term is moot. See *State v. Rodriguez*, 200 Ariz. 105, ¶7, 23 P.3d 100 (App. 2001) (finding defendant's argument that he could not be sentenced on remand to prison for a drug paraphernalia conviction moot, because defendant had presumably already served the prison sentence for that conviction).

court's authority.² Defendant was represented by counsel, received notice of the alleged violations, and had an opportunity to be heard. In accordance with Rule 27.8(b)(3) of the Arizona Rules of Criminal Procedure, the state established by a preponderance of the evidence that defendant failed to appear for a scheduled meeting with his Probation Officer on May 19, 2009 and that defendant tested positive for marijuana on a test administered in February 2009.

Conclusion

¶8 We affirm the court's probation violation findings and the reinstatement of defendant's probation. Pursuant to *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984), defendant's counsel's obligations in this appeal are at an end. Counsel need do nothing 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.

² The court may impose additional conditions, including incarceration, upon a finding that the probationer violated probation by committing an offense listed in §13-3451 *et seq.* See A.R.S. § 13-901.01(E)(2010). Here, when defendant failed a drug test administered on February 12, 2009, he violated term 7 of his probation and the court found he committed a drug offense. Thus, incarceration is appropriate as an additional condition of probation.

¶19 Defendant shall have thirty days from the date of this decision to proceed, if he so desires, with an *in propria persona* motion for reconsideration or petition for review.

_____/s/_____
JON W. THOMPSON, Judge

CONCURRING:

_____/s/_____
PATRICIA A. OROZCO, Presiding Judge

_____/s/_____
DIANE M. JOHNSEN, Judge