

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, ) No. 1 CA-CR 09-0928  
)  
Appellee, ) DEPARTMENT A  
)  
v. ) **MEMORANDUM DECISION**  
) (Not for Publication -  
TARRON LAMAR WOOTEN, ) Rule 111, Rules of the  
) Arizona Supreme Court)  
Appellant. )  
)  
\_\_\_\_\_ )

Appeal from the Superior Court in Maricopa County

Cause No. CR 2007-006329-001 DT

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

**AFFIRMED**

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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 Terry J. Adams, Deputy Public Defender  
Attorneys for Appellant

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**D O W N I E**, Judge

¶1 Tarron Lamar Wooten ("defendant") timely appeals from the superior court's order revoking his probation and sentencing him to sixty days in jail. Pursuant to *Anders v. California*,

386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), defense counsel has advised that a thorough search of the record was conducted and no arguable question of law was found; counsel requests that we review the record for fundamental error. See *State v. Richardson*, 175 Ariz. 336, 339, 857 P.2d 388, 391 (App. 1993). Defendant was given an opportunity to file a supplemental brief *in propria persona*, but he has not done so.

#### FACTS AND PROCEDURAL HISTORY

¶2 In May 2008, defendant pleaded guilty to one count of possession of marijuana, a class 1 misdemeanor. He was sentenced to three years of supervised probation, various fines and service fees, and thirty days in jail. Defendant signed and dated Uniform Terms of Supervised Probation, which required him to, *inter alia*, report to his probation officer as directed ("term 3"); not possess or use illegal drugs or controlled substances ("term 7"); submit to drug and alcohol testing as directed by his probation officer ("term 9"); and participate in counseling programs as directed by his probation officer ("term 10").

¶3 On August 7, 2009, defendant's probation officer filed a petition to revoke probation, alleging nine separate violations. An October 20, 2009 probation violation hearing occurred, at which the superior court found that the State had

proven certain violations. The court revoked defendant's probation and imposed sixty days' jail time.

#### DISCUSSION

¶4 We have read and considered the brief submitted by counsel and have reviewed the entire record. *Leon*, 104 Ariz. at 300, 451 P.2d at 881. Except as discussed *infra*, we find no fundamental error. All proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure ("Rule"). Defendant was present at all critical phases of the proceedings and was represented by counsel. The sentence imposed was within the statutory range.

¶5 The probation violation hearing was held thirty-four days after defendant's arraignment, contrary to Rule 27.8(b) (requiring the violation hearing to be held "no more than 20 days after the revocation arraignment").<sup>1</sup> However, Rule 27 violations "must be viewed from a due process standpoint, and a revocation reversed only if prejudice is demonstrated." *State v. Lee*, 27 Ariz. App. 294, 295, 554 P.2d 890, 891 (1976) (citations omitted).

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<sup>1</sup> The rule allows for a different date if "the court, upon the request of the probationer made in writing or in open court on the record, sets the hearing for another date." Ariz. R. Crim. P. 27.8(b). No such request appears in this record.

¶16 The record reveals no prejudice arising from the untimely hearing.<sup>2</sup> At the outset of the hearing, defendant's rights were explained. Probation officer M.R. made an in-court identification of defendant and provided evidence about the alleged violations. Defendant cross-examined M.R. and testified on his own behalf. At the conclusion of the hearing, the court summarized the evidence and explained its finding that four allegations had been proven. The unproven allegations were dismissed. Defendant was credited with thirty-five days' pre-sentence incarceration credit. See *State v. Baylis*, 27 Ariz. App. 222, 225, 553 P.2d 675, 678 (1976) ("[I]n the absence of prejudice, failure to comply with the provisions of [Rule 27.8(b)] does not require reversal of the trial court's decision to revoke, especially where . . . the trial court specifically provided that the sentence imposed was to commence from the date of arrest.") (citations omitted).

¶17 Sufficient evidence was presented to establish violations of probation terms 3, 7, 9, and 10. See Ariz. R.

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<sup>2</sup> The record also includes no objection to the timeliness of the hearing. "[A]bsent fundamental error, lack of timely objection operates as a waiver on appeal." *State v. Brown*, 125 Ariz. 160, 162, 608 P.2d 299, 301 (1980) (citation omitted). As we discuss *infra*, defendant was not prejudiced by the untimely hearing, so fundamental error does not exist. See *State v. Henderson*, 210 Ariz. 561, 567, ¶ 20, 115 P.3d 601, 607 (2005) (finding that defendant must establish both fundamental error and prejudice arising therefrom to prevail under fundamental error review) (citations omitted).

Crim. P. 27.8(b)(3) ("A violation must be established by a preponderance of the evidence."); *State v. Thomas*, 196 Ariz. 312, 313, ¶ 3, 996 P.2d 113, 114 (App. 1999) (upholding a court's finding of a probation violation "unless the finding is arbitrary or unsupported by any theory of the evidence.") (citation omitted).

**1. Term 3**

¶8 M.R. testified that defendant failed "to report to the office by 2:00 p.m. on August 6th" and later told her he did not report because "he didn't want to get violated" on an outstanding misdemeanor warrant. Defendant testified he saw a "new probation officer" on August 6. On cross-examination, though, he admitted confusion over the date he saw that officer.

**2. Term 7**

¶9 M.R. testified that a drug test "came back positive for THC," and defendant admitted smoking marijuana "about a month ago . . . to help ease the pain for his disability." M.R. testified that she issued a written violation warning to defendant, which he acknowledged in writing.

**3. Term 9**

¶10 M.R. testified that defendant failed to submit to urinalysis testing on May 20, March 6, and February 11, 2009, after which she issued written violation warnings. Defendant

testified he failed to test because he lacked money to pay for the tests.

**4. Term #10**

¶11 M.R. testified she issued a written directive for defendant to participate in drug counseling. Although defendant scheduled an intake appointment, he did not keep it. Defendant testified he did not attend because his medical insurance was canceled and he had no money to pay for the program. After his insurance was reinstated, he was injured in an automobile accident that required surgery and recovery that conflicted with his intake appointment. Defendant, however, admitted he did not reschedule his appointment after recovering from surgery.

¶12 Although conflicting evidence was presented at the violation hearing, “[i]t is for the trial court to resolve such conflicts and to assess the credibility of witnesses in doing so.” *Thomas*, 196 Ariz. at 313, ¶ 3, 996 P.2d at 114 (citation omitted). Substantial evidence supports the superior court’s findings.

**CONCLUSION**

¶13 We affirm the judgment of the superior court. Counsel’s obligations pertaining to defendant’s representation in this appeal have ended. 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

