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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: 02/09/2010  
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BY: GH

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

IN RE RONALD A. )  
)  
) 1 CA-JV 09-0168  
)  
) DEPARTMENT E  
)  
) **MEMORANDUM DECISION**  
) (Not for Publication -  
) 103(G) Ariz. R.P. Juv.  
) Ct.; Rule 28 ARCAP)  
)

Appeal from the Superior Court in Maricopa County

Cause No. JV536174

The Honorable James H. Keppel, Judge

**AFFIRMED**

Andrew P. Thomas, Maricopa County Attorney Phoenix  
By Jeffrey W. Trudgian, Appeals Bureau Chief/  
Deputy County Attorney  
Attorneys for Appellee

James J. Haas, Maricopa County Public Defender Phoenix  
By Eleanor S. Terpstra, Deputy Public Defender  
Attorneys for Appellant

**K E S S L E R**, Judge

¶1 Ronald A. ("Ronald") appeals from the superior court's order terminating his probation as unsuccessful, designating a crime as a felony, and requiring him to register as a sex offender. This appeal was timely filed in accordance with

*Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969). Finding no arguable issue to raise, counsel requests that this Court search the record for fundamental error. Finding no fundamental error, we affirm the juvenile court's order.

#### **FACTUAL AND PROCEDURAL HISTORY**

¶12 In 2003, the State charged then eleven-year-old Ronald with engaging in sexual conduct with a minor, a class 2 felony, and public sexual indecency to a minor, a class 5 felony. Ronald admitted to attempted public sexual indecency to a minor, a class 6 undesignated offense. The court placed Ronald on standard probation with special terms, which included community service, supervision by an adult in the presence of younger siblings, and completion of sex offender treatment. As one of the terms of his plea agreement, Ronald agreed that the offense could be designated as a misdemeanor only upon successful completion of probation.

¶13 Less than one year later, the State alleged Ronald committed one count of sexual conduct with a minor, between June 1, 2004 and July 31, 2004, and a second count of sexual conduct with a minor, between January 1, 2006 and January 21, 2006. Ronald admitted to attempted sexual conduct with a minor, a class 3 felony, and dangerous crime against children, when he

engaged in oral sex on his younger brother.<sup>1</sup> The State then dismissed the first count of sexual conduct with a minor.

¶14 Based on this admission of attempted sexual conduct, the juvenile court reinstated Ronald on standard probation with sex offender terms and detention with release to a residential treatment center. Ronald also began inpatient treatment at Prehab of Arizona, the Dorothy Mitchell Residence. Ronald graduated from the program and transitioned to U-Turn in late 2007.

¶15 In 2009, a review of status hearing was held at the request of Ronald's probation officer. During the hearing, the probation officer indicated that seventeen-year-old Ronald had not been compliant with his probation since he had left U-Turn and had been placed at the ABC group home. The probation officer explained that Ronald had accessed the Internet to view pornographic material, established a Facebook account after he was prohibited from using it, used friends' cell phones to access the Internet, drove himself and other juveniles to an ROTC event without a license, had unreported police contact for jaywalking, and was disruptive in outpatient group therapy sessions. Ronald's attorney indicated that Ronald admitted to

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<sup>1</sup> It was believed that Ronald began abusing his younger brother while he was in court-ordered restoration, and that the abuse continued after Ronald was placed on probation and while he received out-patient sex offender treatment.

being disruptive in group therapy sessions and having a Facebook account. Ronald further admitted to accessing the Internet to view adult pornographic websites and having unreported police contact when jaywalking. The probation officer noted, however, that Ronald's therapist did not believe he was at risk of sexually reoffending. Nevertheless, Ronald's probation officer recommended that the court order he register as a sex offender.

¶6 Ronald's attorney argued that the juvenile court should not require Ronald to register as a sex offender because although Ronald could not be successfully released from probation, he successfully completed sex offender treatment and his therapist did not believe he was at risk of reoffending. Ronald addressed the court indicating he learned to overcome child arousals in treatment, and that he did not believe he was a threat to children so long as he did not look at them in a sexual manner. Ronald also expressed empathy and said he did not want to hurt or cause trauma to another child.

¶7 The juvenile court terminated Ronald's probation as unsuccessful and designated his first offense as a felony. The court considered Ronald's unsuccessful completion of probation, the nature of his offenses, and his continued use of pornographic sites on the Internet and ordered him to register as a sex offender.

¶18 Ronald timely filed a notice of appeal. We have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1) (2003), 8-235(A) (2007), and Arizona Rules of Procedure for the Juvenile Court ("Ariz. R.P. Juv. Ct.") 103(A) and 104(A).

#### DISCUSSION

¶19 After a comprehensive review of the record, we conclude the juvenile court did not commit any fundamental error when it terminated Ronald's probation as unsuccessful, designated his first offense as a felony, and required him to register as a sex offender.

¶10 A juvenile court has broad discretion in determining the proper disposition of a delinquent juvenile. *In re Maricopa County Juv. Action No. JV-510312*, 183 Ariz. 116, 118, 901 P.2d 464, 466 (App. 1995) (citation omitted). We will not disturb a disposition order absent an abuse of discretion. *In re Maricopa County Juv. Action No. JV-512016*, 186 Ariz. 414, 418, 923 P.2d 880, 884 (App. 1996). Further, we view the facts in the light most favorable to sustaining the court's adjudication. See *In re John M.*, 201 Ariz. 424, 426, ¶ 7, 36 P.3d 772, 774 (App. 2001).

#### A. Terminating Probation as Unsuccessful

¶11 Under Ariz. R.P. Juv. Ct. Rule 31(D) ("Rule 31(D)"):

The court may terminate the probation of the juvenile at any time prior to the eighteenth (18) birthday of the juvenile upon the request of the juvenile probation officer, . . . [and] shall notify the victim of any proceeding in which the court is asked to terminate the juvenile's probation and shall afford the victim an opportunity to be heard . . . .

Ariz. R.P. Juv. Ct. 31(D).

¶12 The juvenile court did not commit fundamental error when it terminated Ronald's probation as unsuccessful. The court found that Ronald violated the conditions of his probation because he admitted to accessing the Internet to view adult pornographic websites and having unreported police contact by jaywalking. By using the word "terminated" rather than "revoked," the juvenile court implicitly invoked Rule 31(D), which permits the court to terminate probation at any time. Ariz. R.P. Juv. Ct. 31(D). In any event, we conclude the court's decision to terminate rather than revoke probation is a matter of semantics. See *In re Themika M.*, 206 Ariz. 553, 554, ¶ 8, 81 P.3d 344, 345 (App. 2003) (finding the issue was one of semantics because had the court stated it was revoking juvenile's probation because she failed to comply with its terms, the court's power to do so might have gone unquestioned). While Rule 31(D) presumptively also encompasses early and successful terminations of probation, nothing in its language restricts probation termination only to successful outcomes.

*Id.* Thus, the court was authorized to terminate Ronald's probation as unsuccessful because the procedural requirements of Rule 31(D)<sup>2</sup> were met, and the court found Ronald violated the conditions of probation.

### **B. Designating a Crime as a Felony<sup>3</sup>**

¶13 The juvenile court did not commit fundamental error when it designated Ronald's first offense as a felony. Ronald agreed that his first offense would be designated as a misdemeanor only if he successfully completed probation. *Supra* ¶ 2. He did not successfully complete probation. Consequently, the court did not err in designating Ronald's first offense as a felony.

### **C. Sex Offender Registration**

¶14 The court may require a juvenile who has been adjudicated of attempted sexual conduct with a minor to register as a sex offender until twenty five years of age. A.R.S. § 13-

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<sup>2</sup> The juvenile court terminated Ronald's probation before his eighteenth birthday and upon the request of his probation officer as required by Rule 31(D). Further, at the review of status hearing, Ronald was represented by counsel, was afforded an opportunity to speak, and the court allowed his grandmother to speak about the recommendation for sex offender registration.

<sup>3</sup> We found no statute authorizing the juvenile court to defer designating the offense as a felony subject to Ronald's successful completion of probation. However, we are not required to reverse the juvenile court's modification because even in the absence of statutory authority, the court would have had to designate the offense as a felony when it determined Ronald was delinquent.

3821(A)(4) and (D) (Supp. 2009); *see also In Juv. Action No. JV-132744*, 188 Ariz. 180, 181, 933 P.2d 1248, 1249 (App. 1996).

¶15 Here, the State alleged Ronald committed two counts of sexual conduct with a minor, and Ronald admitted to attempted sexual conduct with a minor. The juvenile court gave Ronald the opportunity to successfully complete sex offender treatment. However, at the review of status hearing, the probation officer indicated that Ronald had not been compliant with his probation, *supra* ¶ 5. Even though the probation officer noted that Ronald's therapist did not believe he was at risk of sexually reoffending, he recommended the court order Ronald to register as a sex offender. After considering the history of Ronald's offenses and that he did not successfully complete probation, the court ordered Ronald to register as a sex offender. We find no abuse of discretion.

#### CONCLUSION

¶16 After careful review of the record, we find no meritorious grounds for reversal of the court's order. The court was authorized to order Ronald to register as a sex offender because he attempted to commit sexual misconduct with a minor. A.R.S. § 13-3821(A)(4) and (D). Further, Ronald was present at the hearing, was adequately represented by counsel, and was afforded an opportunity to speak. Accordingly, we affirm the court's order.



¶17 Upon the filing of this decision, counsel shall inform Ronald of the status of the appeal and his 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, 156-57 (1984). On the court's own motion, Ronald shall have thirty days from the date of this decision to proceed, if he so desires, with a petition for review. Ariz. R.P. Juv. Ct. 107(A).

/S/  
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DONN KESSLER, Judge

CONCURRING:

/S/  
\_\_\_\_\_  
PHILIP HALL, Presiding Judge

/S/  
\_\_\_\_\_  
PATRICIA A. OROZCO, Judge