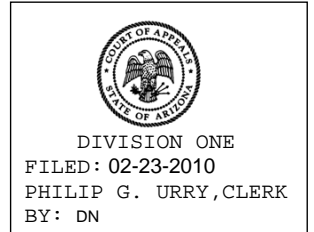


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED  
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE



IN RE FABIAN C. ) 1 CA-JV 09-0204  
)  
) DEPARTMENT B  
)  
) **MEMORANDUM DECISION**  
)  
) (Not for Publication -  
) Ariz. R.P. Juv. Ct. 103(G);  
) ARCAP 28)  
)  
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)  
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Appeal from the Superior Court in Maricopa County

Cause No. JV164058

The Honorable Cathy M. Holt, Judge

**AFFIRMED**

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

The Law Offices of Kevin Breger, PLLC Scottsdale  
By Kevin Breger  
Attorneys for Appellant

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**B A R K E R**, Judge

¶1 Fabian C. appeals from his disposition order committing him to the Arizona Department of Juvenile Corrections ("ADJC") until his eighteenth birthday and ordering him to register as a sex offender until the age of twenty-five. Fabian's counsel filed a brief in accordance with *Anders v. California*, 386 U.S. 738 (1967), and *Maricopa County Juvenile Action No. JV-117258*, 163 Ariz. 484, 486, 788 P.2d 1235, 1237 (App. 1989), finding no arguable grounds for appeal after searching the record. This court's obligation under *Anders* is to search the record for fundamental error. 386 U.S. at 744. Having done so, we affirm.

#### ***Facts and Procedural History***

¶2 On October 1, 2009, Fabian entered into a plea agreement that was accepted by the juvenile court in which he admitted to the following three charges: 1) threatening or intimidating, a class one misdemeanor; 2) solicitation of sexual contact with a minor over the age of fifteen, a class two misdemeanor; and 3) touching with the intent to injure or provoke, a class three misdemeanor. On October 29, 2009, after considering less restrictive alternatives, the juvenile court committed Fabian to ADJC until his eighteenth birthday and ordered him to register as a sex offender until age twenty-five with full community notification. The court considered Fabian's pattern of sexually offending and that the numerous

opportunities for outpatient and inpatient treatment were not successful.

¶3 This timely appeal followed. We have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution, Arizona Revised Statutes sections 12-120.21(A)(1) (2003) and 8-235(A) (2007), and Arizona Rule of Procedure for the Juvenile Court 103(A).

### ***Discussion***

¶4 We have read and considered the entire record and have found no fundamental error. Fabian was present and represented by counsel at all proceedings. The juvenile court informed Fabian of his constitutional rights, and the record indicates Fabian knowingly, voluntarily, and intelligently waived his rights pursuant to Arizona Rule of Procedure for the Juvenile Court 28(C)(5) when he entered an admission pursuant to the plea agreement. Fabian was advised in open court of the nature of the charges and the nature of the possible disposition. Fabian was under eighteen years of age at the time of the final order and was within the jurisdiction of the juvenile court.

¶5 "It is within the juvenile court's discretion to determine the disposition of a juvenile following an adjudication of delinquency and, absent clear abuse of discretion, we will not disturb that disposition." *In re Sean M.*, 189 Ariz. 323, 324, 942 P.2d 482, 483 (App. 1997). Fabian

alleges the juvenile court abused its discretion by committing him to ADJC. However, we find the court did not abuse its discretion because of Fabian's sexual offense history and his pattern of re-offending even after treatment.<sup>1</sup> See *In re Niky R.*, 203 Ariz. 387, 391, ¶ 17, 55 P.3d 81, 85 (App. 2002) (holding commitment to ADJC not an abuse of court's discretion where commitment constitutes a final opportunity for rehabilitation). Fabian also argues the court's order to register as a sex offender with community notification until age twenty-five was an abuse of discretion. The juvenile court may require a juvenile to register as a sex offender if he has been adjudicated delinquent of an act specified in A.R.S. § 13-3821(A). *In re Sean M.*, 189 Ariz. at 324, 942 P.2d at 483. Fabian falls within this restriction; therefore, the juvenile court did not abuse its discretion in ordering Fabian to register as a sex offender with community notification.

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<sup>1</sup> The charges in this matter involved Fabian encouraging or requesting sexual conduct with S.H. and touching S.H. with the intent to insult or provoke by placing his genitals and hands on S.H. without S.H.'s consent. Fabian's first offense involved the attempted molestation of a child. He violated his probation twice and was ordered to secure care for nine months. The current offenses occurred while he was in sex offender treatment.

**Conclusion**

¶16           The disposition by the juvenile court is affirmed. Pursuant to *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984), the obligations of Fabian's counsel in this appeal have ended subject to the following. Counsel need do no more than inform Fabian of the status of the appeal and of his future options, unless counsel's review reveals an issue appropriate for submission to the Arizona Supreme Court by petition for review. See Ariz. R.P. Juv. Ct. 107(A), (J).

/s/

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DANIEL A. BARKER, Judge

CONCURRING:

/s/

\_\_\_\_\_  
PATRICIA K. NORRIS, Presiding Judge

/s/

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PETER B. SWANN, Judge