

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: 04/26/2012
RUTH A. WILLINGHAM,
CLERK
BY: sls

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,)
) No. 1 CA-CR 11-0666
)
 Appellee,) DEPARTMENT E
)
 v.) MEMORANDUM DECISION
)
 STEVEN KYLE DULEY,) (Not for Publication -
) Rule 111, Rules of the
 Appellant.) Arizona Supreme Court)
)
)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR-2007-175066-001 DT

The Honorable Keelan Bodow, Commissioner

AFFIRMED

Thomas C. Horne, 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 Peg Green, Deputy Public Defender
Attorneys for Appellant

H A L L, Judge

¶1 Steven Kyle Duley (defendant) appeals from the revocation of his probation and the sentence imposed. For the reasons set forth below, we affirm.

¶2 Defendant's appellate counsel filed a brief in accordance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), advising that, after a diligent search of the record, she was unable to find any arguable grounds for reversal. We granted defendant an opportunity to file a supplemental brief, which he has not done. See *State v. Clark*, 196 Ariz. 530, 537, ¶ 30, 2 P.3d 89, 96 (App. 1999). Defendant has raised through counsel, however, one issue, the sufficiency of the evidence supporting his probation revocation.

¶3 We review for fundamental error, error that goes to the foundation of a case or takes from the defendant a right essential to his defense. See *State v. King*, 158 Ariz. 419, 424, 763 P.2d 239, 244 (1988). We view the evidence presented at trial in a light most favorable to sustaining the verdict. *State v. Cropper*, 205 Ariz. 181, 182, ¶ 2, 68 P.3d 407, 408 (2003).

¶4 On November 30, 2007, defendant was charged by information with one count of possession or use of narcotic drugs, a class four felony, and one count of possession of drug paraphernalia, a class six felony. Defendant pled guilty to

count one and the court granted the state's motion to dismiss count two. On March 14, 2008, the court placed defendant on supervised probation for a term of four years. The court also ordered defendant to pay a probation service fee of fifty dollars per month.

¶15 On March 21, 2011, defendant's probation officer filed a petition to revoke probation alleging defendant violated his probation by committing aggravated DUI on or about March 13, 2011, failing to submit to drug testing, failing to participate in substance abuse counseling and other programs, failing to pay court-imposed fees, and consuming alcohol. Thereafter, the state moved to dismiss the petition to revoke probation without prejudice, which the court granted.

¶16 On June 21, 2011, defendant's probation officer filed another petition to revoke probation alleging that defendant violated his probation by possessing or using marijuana on or about May 23, 2011, failing to maintain employment, failing to pay court-imposed fees, failing to participate in substance abuse counseling and other programs, and consuming alcohol on or about March 13, 2011, May 21, 2011 and May 22, 2011.

¶17 At the probation violation hearing, Serina Tooms, defendant's assigned adult probation officer, testified that defendant is required to maintain employment as a condition of his probation. Defendant quit his job, however, and failed to

provide Tooms with any evidence that he was pursuing new employment. In addition, Tooms testified that defendant was delinquent \$125 on his probation service fee.

¶8 After the hearing, the court found by a preponderance of the evidence that defendant had violated his probation by failing to maintain employment and timely pay his court-imposed fee. The court reinstated defendant on supervised probation for a period of four years. The court also ordered that defendant be incarcerated in the county jail for six months.

¶9 Defendant argues that insufficient evidence supports the court's findings that he violated his probation. "We review the sufficiency of the evidence by determining whether substantial evidence supports the [court's] finding[s,]" and view the facts in the light most favorable to sustaining the court's findings. See *State v. Kuhs*, 223 Ariz. 376, 382, ¶ 24, 224 P.3d 192, 198 (2010) (internal quotation omitted). We set aside a court's findings for insufficiency of the evidence only when it is clear "that upon no hypothesis whatever" is there sufficient evidence to support the court's findings. See *State v. Arredondo*, 155 Ariz. 314, 316, 746 P.2d 484, 486 (1987).

¶10 Here, the state presented evidence from which the court could reasonably conclude that defendant violated his probation. Defendant's probation officer testified that he quit his job, failed to present any evidence that he was attempting

to obtain new employment, and failed to timely pay his court-imposed fee. Based on our review of the record, there was substantial evidence to support the court's findings.

¶11 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. Defendant was given an opportunity to speak before sentencing, and the sentence imposed was within statutory limits. Furthermore, based on our review of the record, there was sufficient evidence for the court to find that defendant violated his probation.

¶12 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 his 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). Defendant has thirty days from the date of this

decision to proceed, if he desires, with a pro per motion for reconsideration or petition for review. Accordingly, defendant's convictions and sentences are affirmed.

_ / s / _____
PHILIP HALL, Judge

CONCURRING:

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

_ / s / _____
JOHN C. GEMMILL, Judge