

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

MICHAEL EDWARD MILLIGAN,
Appellant.

No. 2 CA-CR 2015-0367
Filed May 23, 2016

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION

See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.24.

Appeal from the Superior Court in Pima County
No. CR20134976001
The Honorable Jane L. Eikleberry, Judge

AFFIRMED IN PART; VACATED IN PART

COUNSEL

Dean Brault, Pima County Legal Defender
By Joy Athena, Assistant Legal Defender, Tucson
Counsel for Appellant

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MEMORANDUM DECISION

Judge Espinosa authored the decision of the Court, in which Presiding Judge Howard and Judge Staring concurred.

ESPINOSA, Judge:

¶1 Michael Milligan appeals from the trial court's September 2015 order revoking his probation and sentencing him to the presumptive, 2.5-year term of imprisonment with credit for 237 days' presentence incarceration. As part of the sentencing, the court also directed Milligan to pay \$151.24 in restitution, affirmed "all previously assessed fines, fees and assessments," and ordered such "fines, fees [and] assessments and/or restitution . . . reduced to a Criminal Restitution Order [CRO]." Counsel has filed a brief in compliance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999), stating she has reviewed the record and has found no "meritorious issue to raise on appeal." Counsel has asked us to search the record for error. Milligan has not filed a supplemental brief. We affirm in part and vacate in part.

¶2 On appeal, we view the evidence in the light most favorable to upholding the trial court's findings that Milligan had violated the conditions of his probation, as alleged in the most recent petition to revoke. *State v. Vaughn*, 217 Ariz. 518, n.2, 176 P.3d 716, 717 n.2 (App. 2008). So viewed, the evidence established that, pursuant to a 2014 plea agreement, Milligan was convicted of aggravated driving while under the influence of an intoxicant while his license was suspended, revoked or restricted. See A.R.S. § 28-1383(A)(1). In April 2014, the trial court suspended the imposition of sentence, placed Milligan on a four-year term of probation, and ordered him to pay restitution, fines, fees and assessments. Thereafter, the state filed successive petitions to revoke probation, and after a contested revocation hearing on the most recent petition, filed in August 2015, the court concluded that Milligan had violated

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the terms of his probation by failing to meet with his probation officer for scheduled meetings on August 4 and 11, 2015, and for failing to complete drug testing on August 6, 2015.

¶3 The trial court acted within its discretion by revoking Milligan's probation and imposing a prison term. *See* Ariz. R. Crim. P. 27.8(c)(2) (upon determination defendant violated condition of probation, "court may revoke, modify or continue probation [and if probation is revoked, the court shall pronounce sentence]"). And, the sentence imposed upon the revocation of Milligan's probation was within the range authorized by law. *See* A.R.S. § 13-702(D).

¶4 Pursuant to our obligation under *Anders*, we have searched the record for fundamental, reversible error and have found one such error. As previously noted, the trial court ordered fines, fees, assessments and restitution reduced to a CRO. However, a CRO is authorized only "to the extent it pertains to restitution." *State v. Veloz*, 236 Ariz. 532, ¶ 20, 342 P.3d 1272, 1278 (App. 2015); *see also* A.R.S. § 13-805(C)(1). We therefore vacate the CRO entered as to fines, fees, and assessments. The trial court's findings of a probation violation, its revocation of Milligan's probation, and the sentence imposed are otherwise affirmed.