

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

TIMOTHY WAYNE BROYLES,
Appellant.

No. 2 CA-CR 2016-0196
Filed November 14, 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NOT FOR PUBLICATION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 Cochise County

No. S0200CR201300671

The Honorable Wallace R. Hoggatt, Judge

AFFIRMED

COUNSEL

Daniel J. DeRienzo, Prescott Valley
Counsel for Appellant

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MEMORANDUM DECISION

Presiding Judge Vásquez authored the decision of the Court, in which Chief Judge Eckerstrom and Judge Miller concurred.

V Á S Q U E Z, Presiding Judge:

¶1 Pursuant to a plea agreement encompassing three separate causes, appellant Timothy Broyles was convicted of attempted shoplifting, attempted trafficking in stolen property in the second degree, and attempted robbery. At a combined sentencing, in regard to the attempted trafficking conviction, the trial court placed Broyles on a four-year term of probation, which was to begin upon completion of his prison sentence imposed in one of the causes and be served before the sentence of probation ordered in the third cause.

¶2 In June 2015, the state filed a petition to revoke Broyles's probation, and after a hearing, the court determined Broyles had committed four of the alleged violations of probation and imposed a minimum, 1.5-year prison term on the attempted trafficking violation. Counsel has filed a brief in reliance on *Anders v. California*, 386 U.S. 738 (1967), and *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999), stating he has reviewed the record and has found no "error or arguable questions of law" to raise on appeal. Counsel has asked us to search the record for fundamental error. Broyles has not filed a supplemental brief. Because Broyles was sentenced after a contested revocation hearing, he is entitled to appeal. See generally *State v. Regenold*, 226 Ariz. 378, 249 P.3d 337 (2011).

¶3 A probation violation "must be established by a preponderance of the evidence," Ariz. R. Crim. P. 27.8(b)(3), and we will uphold a trial court's finding of a violation "unless it is arbitrary or unsupported by any theory of evidence," *State v. Moore*, 125 Ariz.

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305, 306, 609 P.2d 575, 576 (1980). The evidence presented at the violation hearing was sufficient to support the court's determination that Broyles had violated the terms of his probation. Broyles failed to complete a thirty-day residential treatment program because he was removed after violating the program's rules, possessed a deadly weapon, failed to report within seventy-two hours of his discharge from residential treatment, and changed his residence—leaving his whereabouts unknown—all in violation of the terms of his probation. We further conclude the sentence was lawfully imposed and is within the statutory limit. See A.R.S. §§ 13-702(D), 13-1001(C)(3), 13-2307(A), (C).

¶4 Pursuant to our obligation under *Anders*, we have searched the record for fundamental, reversible error and have found none. Therefore, we affirm the trial court's finding that Broyles had violated the terms of his probation and the sentence imposed.