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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA, Appellee, v. MANUEL ARTURO GUZMAN, Appellant.	)	2 CA-CR 2010-0365 DEPARTMENT B MEMORANDUM DECISION Not for Publication Rule 111, Rules of the Supreme Court

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20090810001

Honorable Howard Fell, Judge Pro Tempore

AFFIRMED

Isabel G. Garcia, Pima County Legal Defender
By Stephan J. McCaffery
Tucson
Attorneys for Appellant

E C K E R S T R O M, Judge.

¶1 After a jury trial, appellant Manuel Guzman was convicted of possession of a deadly weapon by a prohibited possessor. The trial court sentenced him to the presumptive prison term of 2.5 years, to be served concurrently with the partially mitigated, five-year term of imprisonment imposed on amended count one of the indictment to which Guzman pled guilty. Counsel has filed a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), and *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999), asking us to consider as a "[n]on-meritorious claim" whether the trial court erred when it permitted the state to impeach him with his prior felony conviction but prevented him from introducing evidence that he had successfully completed the term of probation that had been ordered for that conviction. Appellant has not filed a supplemental brief.

¶2 Before trial, the state filed a notice of its intent to introduce evidence of Guzman's prior conviction to impeach his credibility, should he decide to testify, pursuant to Rule 609, Ariz. R. Evid. Thereafter, Guzman filed a motion in limine pursuant to Rule 403, Ariz. R. Evid., requesting, *inter alia*, that he be permitted to "[s]anitize [his] prior conviction and probation other than the fact that he successfully completed probation and the [fact that the] offense did not involve violence or assault of any kind." At the beginning of the trial, the court ruled that if Guzman chose to testify, the state would be permitted to impeach him with his prior conviction, adding that the jury would "know about [it] anyway because of [the] nature of this offense." With respect to Guzman's motion, the court ruled the state would not be allowed to elicit testimony about the nature of the conviction and if Guzman testified, counsel could elicit testimony from him establishing the offense had not involved violence. However, the

court added it would not permit him to introduce evidence he had completed probation successfully or "how he did on probation . . . that type of thing."

¶3 Defense counsel argued that "successfully completing probation . . . would be proof of a fact in issue," which was that he was prohibited from possessing a deadly weapon, and would "tend to prove that he wouldn't unlawfully possess a weapon unless he had successfully completed probation." Referring to Rule 403, the trial court rejected this argument stating that "the probative value does not outweigh the prejudice" and that the evidence was "not relevant." Counsel asks us to consider whether the court erred in so ruling on the ground that if Guzman's conviction was relevant to prove his lack of credibility, the fact that he had been successful on probation could bolster his credibility by showing he had been rehabilitated. Counsel asks us to consider his argument that "Guzman was entitled to present [the] evidence . . . in order to reduce or eliminate the inference that he was more willing than a non-felon to testify untruthfully."

¶4 Assuming, without deciding, that the objection counsel made in the trial court preserved the argument counsel now asserts on appeal, we see no error. "Trial courts have broad discretion in ruling on the admission of evidence." *State v. Campoy*, 214 Ariz. 132, ¶ 5, 149 P.3d 756, 758 (App. 2006). A trial court may exclude even relevant evidence if "its probative value is substantially outweighed by the danger of unfair prejudice," Ariz. R. Evid. 403, a determination that also is committed to the discretion of the trial court. *See State v. Jeffers*, 135 Ariz. 404, 417, 661 P.2d 1105, 1118 (1983). Rule 609, Ariz. R. Evid., allows a witness to be impeached with a prior conviction subject to certain conditions which are specified in the rule, and the court's

determination, in the exercise of its discretion, that the probative value of the evidence is not outweighed by its unfairly prejudicial effect. *State v. Montano*, 204 Ariz. 413, ¶ 66, 65 P.3d 61, 74 (2003).

¶5 "The purpose of [Rule 609] is to allow the fact-finder to weigh the witness's testimony by his or her general credibility and veracity." *State v. Hatch*, 225 Ariz. 409, ¶ 11, 239 P.3d 432, 434-35 (App. 2010). And "[c]onviction of a felony is material to a witness's credibility." *Id.*, *quoting State v. Gretzler*, 126 Ariz. 60, 85, 612 P.2d 1023, 1048 (1980). There is no similar rule with respect to the admission of evidence showing the convicted felon performed well on probation. Instead, Rule 609(c) addresses the issue of rehabilitation evidence and provides that a conviction cannot be used to impeach a witness if, *inter alia*, "the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted." We note, too, that had our supreme court intended to do so, it could have included a provision in Rule 609 permitting the defendant to introduce such evidence in order to minimize the proverbial sting of the prior conviction. It did so in an analogous context in Rule 609(e), which provides that although a pending appeal of a prior conviction does not render inadmissible evidence of that conviction, evidence of the appeal is admissible.

¶6 That an individual completed probation successfully does not change the fact that the person was convicted of a criminal offense, nor does it make that fact less relevant to the person's credibility. *See Hatch*, 225 Ariz. 409, ¶ 11, 239 P.3d at 434-35.

The trial court's reasoning in precluding Guzman from introducing the evidence is sound and we therefore have no basis for finding the court abused its discretion.

¶7 We have reviewed the entire record for fundamental, reversible error but have found none. We therefore affirm the conviction and the sentence imposed.

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Judge

CONCURRING:

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge