

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



DIVISION ONE  
FILED: 09/25/2012  
RUTH A. WILLINGHAM,  
CLERK  
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**IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE**

STATE OF ARIZONA, ) 1 CA-CR 11-0628  
)  
Appellee, ) DEPARTMENT E  
)  
v. ) **MEMORANDUM DECISION**  
) (Not for Publication -  
DANIEL BRIAN MATTHEWS, ) Rule 111, Rules of the  
) Arizona Supreme Court)  
Appellant. )  
)

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Appeal from the Superior Court in Mohave County

Cause No. CR 2003-1264

The Honorable Rick A. Williams, Judge

**AFFIRMED**

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Thomas C. Horne, Attorney General Phoenix  
by Kent E. Cattani, Chief Counsel,  
Criminal Appeals/Capital Litigation Division  
and Melissa M. Swearingen, Assistant Attorney General  
Attorneys for Appellee

Mohave County Appellate Defender Phoenix  
by Jill L. Evans  
Attorneys for Appellant

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**H O W E**, Judge

¶1 Daniel Brian Matthews appeals from the revocation of his probation and the resulting sentence. Finding no error, we affirm.

#### FACTS AND PROCEDURAL HISTORY

¶2 In the underlying offense, Matthews pled guilty to Theft of Means of Transportation, a Class 3 felony.<sup>1</sup> The trial court placed Matthews on probation for five years beginning June 28, 2004. Among the conditions of his probation, the court ordered that Matthews serve ninety-four days in jail (Uniform Condition 21); obey all laws (Uniform Condition 1); and inform the Adult Probation Department ("APD") where he lives, provide safe access, obtain approval to live there, and not move without permission (Uniform Condition 4). The court ordered Matthews eligible for work release.

¶3 A year later, Matthews received a job offer in North Carolina and requested permission to transfer his probation there. In May 2005, Mohave County granted him a thirty-day pass to travel to North Carolina with instructions to pursue employment and contact North Carolina's probation department to apply for a transfer of supervision. Matthews never met with North Carolina's probation department, however. Instead, he

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<sup>1</sup> We view the facts in the light most favorable to sustaining the trial court's determination and resolve all reasonable inferences against Matthews. *State v. Boozer*, 221 Ariz. 601, 601, ¶ 2, 212 P.3d 939, 939 (App. 2009).

called in early June 2005, and provided an address in Catawba County, although the record does not indicate where he actually lived. About two or three months later, Matthews called North Carolina's probation department and provided a new address in Mecklenburg County, North Carolina. Although he claims that he reported the full address, the address in North Carolina's records did not include his apartment number. Matthews moved without permission of either the Mohave County or North Carolinian officials.

¶4 In August 2005, North Carolina denied Matthews' transfer request, stating: "DEFENDANT NEVER LIVED IN CATAWBA COUNTY. DEFENDANT CALLED AND REPORTED NEW ADDRESS ([ "7910 Woodbridge Drive, Charlotte, NC 28612"]) AND WILL RESIDE IN CHARLOTTE." Matthews made no further effort to contact either North Carolina or Mohave County officials. The next month, North Carolina issued a second response to his application, this time explaining that it was denied because there was "NO CONTACT FROM THE DEFENDANT."

¶5 In December 2005, North Carolina informed Mohave County that it had denied Matthews' transfer application. Because Mohave County had no address on file for Matthews, it sent him a letter at the last known address according to North Carolina's responses to his transfer request. The letter advised Matthews that his request for transfer of probation had

been denied and ordered his return to Arizona by January 16, 2006. The letter warned: "*Failure to return as directed will be a violation of probation which will result in a warrant for your arrest.*" Because the address was missing the apartment number, Matthews claimed that he never received it. Matthews failed to return as instructed.

¶16 In January 2006, the State petitioned to revoke Matthew's probation. The petition alleged that Matthews violated Uniform Condition 4 of his probation:

[B]etween August 23, 2005 and November 18, 2005, [Matthews] changed his address without notification and his current whereabouts are unknown, as reported by the North Carolina Probation Department and returned mail.

The superior court issued a fugitive warrant for Matthews' arrest.

¶17 Mohave County did not know Matthews' location until over four years later, when he was arrested in North Carolina for three criminal offenses. Matthews was extradited to Mohave County to face charges for probation violations. After a North Carolina court convicted Matthews of all three offenses, the State filed a supplemental petition to revoke probation, alleging that Matthews failed to obey all laws, in violation of Uniform Condition 1.

¶18 At the probation revocation hearing, the State presented evidence that North Carolina denied Matthews' transfer

request because he failed to provide his correct address or maintain contact with North Carolina probation authorities. Matthews testified that the address North Carolina had was correct, except that it did not have the apartment number. He claimed, however, that he reported the full address when he called. Matthews blamed Mohave County and North Carolina for any "lack of communication" because he had never changed his phone number. Matthews further testified that North Carolina instructed him not to contact it anymore unless he moved or changed employment. Because he stayed at the same apartment and worked for the same employer for another 4.5 years, Matthews claimed that he complied with the terms of his probation.

¶9 The trial court found that Matthews "did not maintain contact as he should have and did not notify the probation department, Mohave County or the North Carolina authorities, of his current address." The court also found that the State proved by a preponderance of the evidence the allegations in its supplemental petition based on his criminal convictions in North Carolina.

¶10 At the disposition hearing, Matthews again argued that he complied with the terms of his probation because he reported his new address to North Carolina and that it was reasonable for him to believe that North Carolina authorities knew his whereabouts. He further argued that his phone number never

changed, so if North Carolina's probation authority did not know where he was, it should have called him. The trial court rejected these arguments:

While there may have been miscommunications, the Court believes that the burden of those fall squarely on the defendant's shoulders. Because it is the defendant's obligation to make sure that he is in compliance with probation. And the testimony presented indicates that clearly he did not live up to those obligations.

The court found no aggravators and imposed a "substantially mitigated sentence" of two years in prison.

¶11 Matthews timely appeals. We have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution, and Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1) (Westlaw 2012),<sup>2</sup> 13-4031 and -4033(A)(1).

#### DISCUSSION

¶12 Matthews argues that insufficient evidence supports the determination that he violated Uniform Condition 4 of his probation by failing to report his changes of address. On this record, we find no abuse of discretion.

¶13 Except in limited circumstances, "the revocation of probation has always been deemed to lie within the sound discretion of the trial court." *State v. Sanchez*, 19 Ariz. App. 253, 254, 506 P.2d 644, 645 (1973). This Court will uphold a

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<sup>2</sup> Absent material revisions since the date of the offense, we cite to the current version of applicable statutes.

court's finding of a probation violation unless the finding is "arbitrary or unsupported by any theory of the evidence." *State v. Thomas*, 196 Ariz. 312, 313, ¶ 3, 996 P.2d 113, 114 (App. 1999). "A violation must be established by a preponderance of the evidence." Ariz. R. Crim. P. 27.8(b)(3). The evidence is not insufficient simply because the evidence is conflicting. *See Thomas*, 196 Ariz. at 313, ¶ 3, 996 P.2d at 114. We defer to the trial court's resolution of such conflicts and its weighing of the evidence. *See id.*

¶14 The trial court had sufficient evidence to find that Matthews violated Uniform Condition 4 of his probation. That condition required him to notify APD where he was living, obtain APD's approval to live there, and to not move without APD's permission. Witness testimony and documentary evidence show that Matthews did not seek permission from his probation officer in Mohave County before changing addresses. The evidence also shows that he did not report his new address to APD. Indeed, his Mohave County probation file contained no new address or any record of contact.

¶15 Matthews contends that although he did not notify APD of his change in residence, he met his obligations under Uniform Condition 4 by reporting it to North Carolina's probation department. Such notification was inadequate. The Mohave County probation officer in charge of outgoing transfers

testified that a probationer remains under the supervision of the sending state until the receiving state approves the transfer request. Because North Carolina never approved his application, Matthews remained under the supervision of Mohave County. Matthews thus had an affirmative duty to report his home address to his probation officer in Mohave County and to seek permission before moving. See *State v. Bly*, 120 Ariz. 410, 412, 586 P.2d 971, 973 (1978) ("The probationer has the positive duty to keep the adult probation officer apprised of his whereabouts. When he fails to do this there is a prima facie case made that he has violated the terms of his probation."). Matthews did not do so. He thus violated the express terms of his probation under Uniform Condition 4.

¶16 Matthews next argues that the trial court erred in finding that he violated Uniform Condition 1 of his probation by failing to obey all laws based on his 2011 North Carolina convictions. Matthew contends that those convictions occurred after his probation period expired because he did not violate Condition 4. Because we conclude that the trial court properly revoked Matthews' probation for violating Uniform Condition 4, we reject this argument.



**CONCLUSION**

¶17 For these reasons, we affirm.

\_\_\_\_\_/s/\_\_\_\_\_  
RANDALL M. HOWE, Judge

CONCURRING:

\_\_\_\_\_/s/\_\_\_\_\_  
JOHN C. GEMMILL, Presiding Judge

\_\_\_\_\_/s/\_\_\_\_\_  
ANDREW W. GOULD, Judge