

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: 10/25/2012  
RUTH A. WILLINGHAM,  
CLERK  
BY: sls

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

STATE OF ARIZONA, ) No. 1 CA-CR 11-0891  
)  
Appellee, ) DEPARTMENT D  
)  
v. ) **MEMORANDUM DECISION**  
)  
JAMES MICHAEL MORGAN, ) (Not for Publication -  
) Rule 111, Rules of the  
Appellant. ) Arizona Supreme Court)  
)

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Appeal from the Superior Court in Maricopa County

Cause No. CR1989-005389

The Honorable Jeffrey A. Rueter, Judge

**AFFIRMED**

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Thomas C. Horne, Attorney General Phoenix  
By Kent E. Cattani, Chief Counsel,  
Criminal Appeals/Capital Litigation Section  
Attorneys for Appellee

Maricopa County Public Defender's Office Phoenix  
By Kathryn L. Petroff, Deputy Public Defender  
Attorneys for Appellant

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G E M M I L L, Judge

¶1 James Michael Morgan appeals from his November 28,  
2011 probation revocation and the resulting prison sentence;  
Morgan was serving probation in connection with Count 3 of his

1990 attempted child molestation conviction. Morgan's counsel filed a brief in compliance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), stating that he has searched the record and found no arguable question of law and requesting that this court examine the record for reversible error. Morgan was afforded the opportunity to file a *pro se* supplemental brief but did not do so. See *State v. Clark*, 196 Ariz. 530, 537, ¶ 30, 2 P.3d 89, 96 (App. 1999). For the following reasons, we affirm.

#### **FACTS AND PROCEDURAL HISTORY**

¶12 "We view the facts and all reasonable inferences therefrom in the light most favorable to sustaining the convictions." *State v. Powers*, 200 Ariz. 123, 124, ¶ 2, 23 P.3d 668, 669 (App. 2001).

¶13 Since 1990, Morgan has variously served prison sentences and time on probation. During that twenty-two year period, Morgan has attended numerous hearings, sought post-conviction relief, and been assigned several probation officers. Because Morgan's record is convoluted and stretches across three decades, extensive review is necessary.

¶14 On January 23, 1990, Morgan was convicted on three counts of attempted child molestation. Initially, Morgan was sentenced to eight years imprisonment on Count 1, followed by intensive life-time probation thereafter on both Count 2 and

Count 3. In 1997, Morgan was released from prison after completing his Count 1 prison term. Over the next six years, Morgan violated probation at least twice, including his failure to obtain proper permission before associating with a woman with two minor daughters. As a result, Morgan's Count 2 probation was revoked and he was sentenced to a second, mitigated ten-year prison term. He began serving that Count 2 term in March of 2003.

¶15 On February 14, 2011, Morgan completed his Count 2 prison term. He was then required to comply with life-time probation stemming from his last remaining count, Count 3. On September 8, 2011, however, Morgan was arrested during a routine visit with his parole officer. During that meeting, the officer discovered that Morgan seemingly violated two terms of his probation: Morgan (1) knowingly associated with a person having a criminal record without prior written approval and (2) possessed sexually-suggestive photographs of children, similarly-aged to his 1989 victims, as well as children's toys and books.

¶16 During October and November of 2011, an evidentiary hearing was conducted on four separate days to receive evidence regarding whether Morgan's Count 3 probation should be revoked. The State called three of Morgan's parole officers to testify as to their experiences in supervising him. At the conclusion of

the hearing on November 14, 2011, the court found Morgan in violation of certain terms of his probation and scheduled a disposition hearing for November 28, 2011. At the disposition hearing, the court decided that Morgan's conduct warranted revocation of his probation and imposition of prison time. Morgan was then sentenced to a third, eight-year prison term. Morgan timely appealed.

### DISCUSSION

¶17 Having considered defense counsel's brief and examined the record for reversible error, see *Leon*, 104 Ariz. at 300, 451 P.2d at 881, we find none. The evidence presented supports the revocation of probation and the prison sentence imposed falls within the range permitted by law. As far as the record reveals, Morgan was represented by counsel at all stages of the proceedings, and these proceedings were conducted in compliance with his constitutional and statutory rights and the Arizona Rules of Criminal Procedure.

¶18 Pursuant to *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984), counsel's obligations in this appeal have ended. Counsel need do no more than inform Morgan of the disposition 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. Morgan has thirty days from the date of this decision in which to proceed,

if he desires, with a *pro se* motion for reconsideration or petition for review.

**CONCLUSION**

¶9 The probation revocation and resulting prison sentence are affirmed.

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

CONCURRING:

\_\_\_\_\_/s/\_\_\_\_\_  
PETER B. SWANN, Judge

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