

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: 11/20/2012
RUTH A. WILLINGHAM,
CLERK
BY: sls

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) No. 1 CA-CR 12-0322
)
Appellee,) DEPARTMENT C
)
v.) **MEMORANDUM DECISION**
)
ARTERIA DAWSON,) (Not for Publication -
) Rule 111, Rules of the
Appellant.) Arizona Supreme Court)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2005-031934-002 SE

The Honorable J. Justin McGuire, Judge *Pro Tempore*

AFFIRMED

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

James J. Haas, Maricopa County Public Defender Phoenix
by Paul J. Prato, Deputy Public Defender
Attorneys for Appellant

T H U M M A, Judge

¶1 This appeal is filed in accordance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969). Counsel for defendant Arteria Dawson

asks this court to search the record for fundamental error. After reviewing the record, Dawson's probation revocation and resulting prison sentence are affirmed.

FACTS AND PROCEDURAL HISTORY¹

¶12 In 2006, Dawson pled guilty to theft of means of transportation, a Class 3 felony, and was placed on probation for three years. Later in 2006, Dawson was alleged to have violated his probation by committing a separate felony offense in CR2006-163741-001DT. In 2007, the court found Dawson violated his probation and reinstated Dawson on probation for a period of five years beginning with his discharge from prison for the separate felony offense. In March 2011, Dawson was again found to have violated his probation and reinstated on probation, with a revised probation expiration date of April 16, 2012, and incarcerated for seven months as a condition of probation.

¶13 Dawson received and signed his new probation conditions, in which Dawson agreed to, among other things, (1) participate and cooperate in any program of counseling or assistance pertaining to substance abuse as directed by the Adult Probation Department (APD); (2) not possess or use illegal drugs or controlled substances and submit to drug and alcohol

¹ This court views the facts in the light most favorable to sustaining the trial court's judgment and resolves all reasonable inferences against Dawson. *State v. Fontes*, 195 Ariz. 229, 230, ¶ 2, 986 P.2d 897, 898 (App. 1998).

testing as directed by the APD; and (3) abide by the terms of intensive probation, including remaining at his place of residence, adhering to a written, agreed-upon intensive probation schedule and obtaining prior permission from APD before leaving his residence or deviating from his schedule.

¶4 On April 2, 2012, Probation Officer Preston filed a petition to revoke probation, alleging Dawson possessed or used methamphetamine, cocaine and marijuana on various occasions over the prior six months. The petition also alleged Dawson missed 11 drug tests during this time, did not participate or cooperate in his substance abuse treatment and failed to follow his intensive probation schedule 24 times. Dawson denied these allegations at his probation revocation arraignment and a witness violation hearing was set. Dawson was present and represented by counsel at his revocation arraignment and witness violation hearing.

¶5 At the witness violation hearing, Probation Officer Preston testified Dawson failed to enter his substance abuse treatment program; tested positive for cocaine, marijuana and amphetamines multiple times; admitted to using cocaine, marijuana and methamphetamine multiple times; and failed to comply with his intensive probation schedule. The State also properly offered into evidence three admissions of drug use, each signed by Dawson. Probation Officer Preston was cross-examined by Dawson's counsel.

¶16 The superior court found the State proved by a preponderance of the evidence that Dawson had violated various conditions of his probation by using illegal drugs, failing to participate in substance abuse treatment and failing to follow his intensive probation schedule. The superior court revoked Dawson's probation and, after considering aggravating and mitigating circumstances, sentenced Dawson to the presumptive term of 3.5 years' incarceration, with credit for 271 days served.

¶17 Dawson timely appealed the revocation of probation and resulting sentence. This court has jurisdiction pursuant to Arizona Revised Statutes (A.R.S.) sections 12-120.21(A)(1), 13-4031 and -4033(A).²

DISCUSSION

¶18 Counsel for Dawson advised this court that after a diligent search of the entire record, he found no arguable question of law. This court reviews Dawson's sentence for fundamental error, an error that is clear and egregious. *State v. Gendron*, 168 Ariz. 153, 155, 812 P.2d 626, 628 (1991). A review of counsel's brief and a full review of the record reveals no reversible error. See *Leon*, 104 Ariz. at 300, 451 P.2d at 881. The proceedings were conducted in compliance with

² Absent material revisions after the relevant dates, statutes cited refer to the current version unless otherwise indicated.

the Arizona Rules of Criminal Procedure, Dawson was present and represented by counsel at all stages of the proceedings and the sentence imposed was within the statutory limits with proper credit given for presentence time served. Dawson's probation revocation and resulting sentence are therefore affirmed.

¶9 Upon the filing of this decision, defense counsel is directed to inform Dawson of the status of his appeal and of his future options. Defense counsel has no further obligations unless, upon review, counsel finds an issue appropriate for submission to the Arizona Supreme Court by petition for review. See *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984). Dawson shall have 30 days from the date of this decision to proceed, if he desires, with a *pro se* motion for reconsideration or petition for review.

CONCLUSION

¶10 Dawson's probation revocation and resulting prison sentence are affirmed.

/S/_____
SAMUEL A. THUMMA, Judge

CONCURRING:

/S/_____
PHILIP HALL, Presiding Judge

/S/_____
PETER B. SWANN, Judge