

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: 8/15/2013
RUTH A. WILLINGHAM,
CLERK
BY: mjt

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) 1 CA-CR 12-0600
)
Appellee,) DEPARTMENT E
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
JOSE ANTONIO CUADRAS,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2010-122391-001

The Honorable Sheila A. Madden, Judge *Pro Tempore*

AFFIRMED

Thomas C. Horne, Attorney General Phoenix
By Joseph T. Maziarz, Chief Counsel
Criminal Appeals Section
Jana Zinman, Assistant Attorney General
Attorney for Appellee

James Haas, Maricopa County Public Defender Phoenix
By Charles R. Krull, Deputy Public Defender
Attorney for Appellant

C A T T A N I, Judge

¶1 Jose Antonio Cuadras appeals from the superior court's finding that he willfully violated two conditions of his probation. For reasons that follow, we affirm.

FACTS AND PROCEDURAL BACKGROUND¹

¶2 In 2010, Cuadras entered a guilty plea to one count of solicitation to commit possession of narcotic drugs for sale, a Class 4 felony, pursuant to a plea agreement with the State. Consistent with the terms of the agreement, the superior court suspended sentence and imposed 18 months' probation. Cuadras signed a written document detailing the conditions of his probation.

¶3 Cuadras, who is a Mexican citizen, was shortly thereafter deported to Mexico. After Cuadras returned to the United States, the Adult Probation Department ("APD") filed a petition to revoke probation, alleging several violations including (1) failure to provide APD with an address where he was residing upon his return to the United States (probation condition four) and (2) failure to report his contact with law enforcement (on May 27, 2011) to APD within 72 hours (probation condition eight). At a violation hearing, the superior court found that Cuadras had violated probation conditions four and eight, and reinstated probation.

¶4 Cuadras timely appealed. We have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution

¹ We view the facts in the light most favorable to sustaining the trial court's finding of a probation violation. See *State v. Vaughn*, 217 Ariz. 518, 519 n.2, ¶ 3, 176 P.3d 716, 717 n.2 (App. 2008).

and Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1), 13-4031, and -4033(A).²

DISCUSSION

¶5 The State must prove a probation violation by a preponderance of the evidence. Ariz. R. Crim. P. 27.8(b)(3). A trial court has discretion in determining the disposition of a probation violation. See *State v. Watkins*, 125 Ariz. 570, 573, 611 P.2d 923, 926 (1980); see also *State v. Sanchez*, 19 Ariz. App. 253, 254, 506 P.2d 644, 645 (1973). We will affirm a probation-violation finding unless it "is arbitrary or unsupported by any theory of evidence." *State v. Vaughn*, 217 Ariz. 518, 521, ¶ 14, 176 P.3d 716, 719 (App. 2008) (citation omitted).

¶6 Cuadras argues that there is insufficient evidence he knew and understood the conditions of his probation and that the trial court therefore abused its discretion by finding that he willfully violated conditions four and eight. Cuadras admits that he signed a document detailing his probation conditions and that he did not comply with conditions four and eight. He argues, however, that his violation was not "willful," because he did not understand the terms at issue. See *State v. Alves*, 174 Ariz. 504, 506, 851 P.2d 129, 131 (App. 1992) ("A violation

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

of probation must be willful. . . . [A] termination for the violation of a rule which a probationer is not, and could not be expected to be aware of, will not support a revocation of probation."). Cuadras claims that he does not speak, read, or comprehend English, and he contends that no evidence establishes that his probation terms and conditions, which were given to him in English, were read or explained to him in Spanish to confirm that he understood them.

¶17 An appellant has the burden of proving that the superior court acted arbitrarily. *State v. Villalobos*, 114 Ariz. 392, 394, 561 P.2d 313, 315 (1977). Here, Cuadras did not provide a transcript from the sentencing hearing. "When an incomplete record is presented to an appellate court, it must assume that any testimony or evidence not included in the record on appeal supported the action taken by the [superior] court." *Id.*

¶18 Even on the merits, Cuadras's argument is unavailing. A Spanish interpreter was present at the plea agreement/change of plea hearing when the superior court reviewed the plea agreement, potential sentence, availability of probation, probation conditions, constitutional rights, and rights of review with Cuadras. The interpreter was also present at the immediately-following sentencing hearing. Although the violation hearing judge noted that it was unclear from the

record whether Cuadras had his probation conditions translated for him, Cuadras testified that the interpreter read the probation terms and conditions to him in Spanish at the plea agreement/change of plea hearing. Thereafter, Cuadras signed the uniform conditions of supervised probation, which contained conditions four and eight.

¶9 Based upon the foregoing, sufficient evidence established that Cuadras was given proper notice of his probation conditions, and he admitted violating conditions four and eight. Accordingly, the superior court did not abuse its discretion by finding a probation violation.

CONCLUSION

¶10 For the foregoing reasons, we affirm.

/S/
KENT E. CATTANI, Judge

CONCURRING:

/S/
ANDREW W. GOULD, Presiding Judge

/S/
PATRICIA K. NORRIS, Judge