

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Appellee*,

v.

ENRIQUE VALENZUELA CONDE, *Appellant*.

No. 1 CA-CR 17-0073
FILED 12-7-2017

Appeal from the Superior Court in Yuma County
No. SA1400CR201400781
The Honorable Maria Elena Cruz, Judge

APPEAL DISMISSED

COUNSEL

Arizona Attorney General's Office, Phoenix
By Elizabeth B.N. Garcia
Counsel for Appellee

Yuma County Legal Defender's Office, Yuma
By Terri L. Capozzi
Counsel for Appellant

STATE v. CONDE
Decision of the Court

MEMORANDUM DECISION

Presiding Judge Michael J. Brown delivered the decision of the Court, in which Chief Judge Samuel A. Thumma and Judge Randall M. Howe joined.

B R O W N, Judge:

¶1 In 2014, Enrique Valenzuela Conde pled guilty to theft, a class 6 felony, and in November 2014, was placed on 24 months' supervised probation. In July 2016, a probation officer petitioned the superior court to revoke Conde's probation, alleging he failed to self-surrender to serve nine days in jail as the court ordered. Conde then entered into a probation violation agreement with the State, agreeing to the minimum prison sentence of six months. When the court indicated it was not inclined to follow the agreement, it allowed Conde to withdraw his admission and have an evidentiary hearing on the allegation that he violated probation. Although the record does not reflect that Conde explicitly withdrew his admission, the court later held a contested probation violation hearing, and the court noted Conde's withdrawal of his admission at the subsequent disposition hearing.

¶2 In October 2016, Conde moved to dismiss the petition to revoke his probation with prejudice, alleging that the State and the Yuma County Adult Probation Department ("Department") committed misconduct. Among other things, Conde argued that the Department's general policy of withholding case notes from defense counsel violated its mandatory disclosure obligations in probation violation cases. He also argued that the attorney general's representation of the Department presented a conflict of interest and violated principles of due process and separation of powers. The superior court denied the motion and proceeded to hold a probation violation hearing, mitigation hearing, and a disposition hearing. Finding the State proved by a preponderance of the evidence that Conde violated a condition of his probation, the court revoked probation and sentenced Conde to the presumptive term of one-year imprisonment (with 212 days presentence incarceration credit), followed by a term of community supervision.

¶3 Conde filed a timely notice of appeal, indicating he was appealing the superior court's probation revocation order, the resulting sentence, and all related orders. In his appellate brief, however, Conde does

STATE v. CONDE
Decision of the Court

not specify which order he is appealing or challenge the finding revoking probation or the sentence imposed. Instead, he argues that the court erred in finding that (1) Arizona Supreme Court Rule 123 applies to disclosures in pending probation violation cases; and (2) the attorney general's representation of the Department did not present a conflict of interest nor did it violate constitutional principles. Conde does not request that we reverse the court's denial of his motion to dismiss, the finding revoking probation, or the sentence imposed. For these reasons and those that follow, we dismiss Conde's appeal because the issues raised are moot and abstract. *State v. Gastelo*, 111 Ariz. 459, 461 (1975) ("We are not obliged to consider moot questions or abstract propositions.").

¶4 As Conde acknowledges, he completed his term of imprisonment. And as the State suggests in its answering brief, Conde presumably completed the community supervision term, which Conde does not dispute. Analyzing the disclosure and conflict issues Conde raises on appeal, therefore, are not essential or even helpful to the resolution of the appeal. Our decision would have no effect on the revocation of his probation or the resulting sentence. See *Scheerer v. Munger ex rel. Cty. of Pima*, 230 Ariz. 137, 140, ¶ 8 (App. 2012) (explaining that the sentencing issue in *State v. Hartford*, 145 Ariz. 403 (App. 1985), was "moot because it would have been impossible to negate a sentence he had served to completion and from which he already had been discharged"). Moreover, we are not persuaded by Conde's suggestion that we should decide the issues he raises on appeal because they may otherwise evade review. Accordingly, Conde's appeal is dismissed.



AMY M. WOOD • Clerk of the Court
FILED: AA