

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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.

ANTHONY CHARLES ELEJALDE, *Appellant*.

No. 1 CA-CR 17-0236
FILED 2-27-2018

Appeal from the Superior Court in Maricopa County
No. CR2006-031034-001
The Honorable John R. Doody, Judge *Pro Tempore*

AFFIRMED

COUNSEL

Arizona Attorney General's Office, Phoenix
By Jana Zinman
Counsel for Appellee

Maricopa County Public Defender's Office, Phoenix
By Jesse Finn Turner
Counsel for Appellant

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MEMORANDUM DECISION

Judge Kenton D. Jones delivered the decision of the Court, in which Presiding Judge Randall M. Howe and Judge James B. Morse Jr. joined.

J O N E S, Judge:

¶1 Anthony Elejalde appeals the trial court's order finding he violated the terms of his probation. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 In June 2007, Elejalde pleaded guilty to two counts of attempted child molestation arising out of events occurring in January 2006.¹ The following month, the trial court placed Elejalde on concurrent terms of lifetime probation. As part of his probation, Elejalde was instructed, in writing, to "obtain prior written approval of the [probation department] before traveling outside Maricopa County." A separate condition of his probation required that he obtain written permission before leaving the state.

¶3 In November 2016, Elejalde requested permission from the probation department to visit family in Sacramento, California, over the Thanksgiving holiday. The written request form advised Elejalde that "[f]inal approval for all activities must come from [his] supervision team" and, in bold and all capital letters, "approval is based upon the specific request only." When asked, "Where is the activity to occur? (be specific)," Elejalde wrote "[p]arents' house for Thanksgiving dinner," and a "[h]otel . . . to be determined." Elejalde provided the street address for both locations but did not mention any other destinations or activities.

¶4 Elejalde's written application also included a "what-if list . . . of every possible situation the offender can think of surrounding an activity, contact, or visitation and how the offender will handle that particular situation." (Emphasis omitted). The self-stated purpose of the

¹ We view the facts in the light most favorable to upholding the trial court's finding that Elejalde violated the conditions of his probation. *State v. Vaughn*, 217 Ariz. 518, 519 n.2, ¶ 3 (App. 2008) (citing *State v. Maldonado*, 164 Ariz. 471, 473 (App. 1990)).

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form is to encourage the offender “to be pro-active in keeping the community and hi[m]self safe.” None of Elejalde’s what-if scenarios suggested that he contemplated spending time outside of Sacramento but focused instead on circumstances likely to arise inside his parents’ home.

¶5 The probation department issued Elejalde a permit approving detailed travel plans and incorporating his request and what-if list. After returning to Arizona, Elejalde admitted to a probation officer that, while in California, he traveled to San Francisco for a few hours of sightseeing.

¶6 In December 2016, Elejalde’s probation officer petitioned to revoke his probation on multiple grounds, including that:

The defendant failed to get prior permission of the [probation department] before leaving the state. (To wit: The defendant was traveling on an approved travel permit to Sacramento, CA. The defendant left Sacramento and traveled to San Francisco without the knowledge or permission of the [probation department]).

Following an evidentiary hearing, the trial court determined Elejalde’s day trip to San Francisco was not “within the reasonable scope of the travel permit” to Sacramento and found Elejalde in violation of his probation.² In March 2017, the court reinstated Elejalde’s probation. Elejalde timely appealed, and we have jurisdiction pursuant to Arizona Revised Statutes §§ 12-120.21(A)(1), 13-4031, and -4033(A)(1).

DISCUSSION

¶7 This Court will uphold the trial court’s finding that a probationer has violated his probation “unless the finding is arbitrary or unsupported by any theory of evidence.” *State v. Vaughn*, 217 Ariz. 518, 519, ¶ 14 (App. 2008) (quoting *State v. Thomas*, 196 Ariz. 312, 313, ¶ 3 (App. 1999)). Elejalde argues the court erred in finding a violation here because: (1) he was not advised in writing that he was not permitted to travel to San Francisco, and (2) insufficient evidence supports the court’s finding that the San Francisco trip was outside the reasonable scope of the travel permit. We disagree.

² The trial court also found Elejalde committed six other violations, none of which are the subject of this appeal.

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¶8 The terms of Elejalde’s probation are clear: he is not to travel anywhere outside of Arizona without specific permission. These conditions were communicated to Elejalde in writing via the terms of his probation, the visitation request form, and the travel permit.

¶9 Moreover, when asked to “be specific” about his vacation request, Elejalde advised only that he would be “visiting family in Sacramento” and provided only two addresses, both in Sacramento. Although the request form states approval is based “upon the specific request only,” Elejalde did not detail any plans outside of Sacramento. When asked to consider “every possible situation” that could arise during his proposed visit through a what-if list, Elejalde made no mention of day trips outside of Sacramento or sightseeing. Based upon Elejalde’s specific representations, the probation department issued a permit authorizing the specific activities and locations Elejalde requested — traveling to Sacramento, visiting family in Sacramento, and traveling back to Arizona. Such authorization cannot be read to give Elejalde *carte blanche* to travel outside of Sacramento at his leisure throughout the duration of his approved trip.

¶10 Accordingly, the trial court did not err in concluding Elejalde knew specific permission was required to travel to any location outside of Arizona or finding he failed to obtain such permission in violation of the terms of his probation. To the extent Elejalde wanted to sightsee in San Francisco, his probation terms required him to be specific about it within his request and to obtain prior written permission. He did not do so.

CONCLUSION

¶11 The trial court’s order finding Elejalde violated the terms of his probation by traveling to San Francisco is affirmed.