IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Appellee*,

v.

JOHN WILLIAM COX, IV, *Appellant*.

No. 1 CA-CR 17-0742
FILED 5-8-2018

Appeal from the Superior Court in Maricopa County
No. CR2012-132134-001
The Honorable Christine E. Mulleneaux, Judge *Pro Tempore*

AFFIRMED

COUNSEL

Maricopa County Public Defender's Office, Phoenix
By Mark E. Dwyer
Counsel for Appellant

Arizona Attorney General's Office, Phoenix
By Joseph T. Maziarz
Counsel for Appellee

MEMORANDUM DECISION

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

M O R S E, Judge:

¶1 This is an appeal under *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297 (1969). Counsel for John William Cox, IV ("Defendant") has advised that, after searching the entire record, he has been unable to discover any arguable questions of law and has filed a brief requesting this court conduct an *Anders* review of the record. Defendant was also allowed to file a supplemental brief in propria persona but did not do so. Finding no reversible error, we affirm.

¶2 In 2012, in the Maricopa County Superior Court, Defendant pled guilty to one count of Attempted Molestation of a Child, a class 3 felony, and a Dangerous Crime Against Children and was placed on lifetime probation. In 2013, Defendant's probation officer filed a petition to revoke probation, but that petition was ultimately dismissed without prejudice on the State's motion. In 2015, the probation officer alleged that Defendant had absconded and filed another petition to revoke. That petition was dismissed at the request of the probation officer in August 2017. On the same day, the probation officer filed a new petition to revoke, and alleged that on January 12, 2013, Defendant had committed two counts of Luring a Minor for Sexual Exploitation, a class 3 felony, and a Dangerous Crime Against Children.

¶3 Defendant had been charged with those offenses in the Pinal County Superior Court, pled no contest to the charges and, on February 9, 2017, was sentenced to seven years in prison.

¶4 At a violation hearing in Maricopa County on October 17, 2017, the State introduced a certified copy of the sentencing minute entry from the Pinal County court. The Maricopa County court found that the State had proved by a preponderance of the evidence that Defendant had violated probation. The court then proceeded directly to a disposition hearing and sentenced Defendant to 10 years in prison to run consecutive to the prison term imposed in the Pinal County case.

¶5 We have read and considered Defendant's *Anders* brief, and we have searched the entire record for reversible error. Our review reveals no fundamental error. *See Leon*, 104 Ariz. at 300 ("An exhaustive search of the record has failed to produce any prejudicial error."). The Maricopa County court properly held a revocation hearing, considered evidence of the certified copy of the minute entry from the Pinal County proceedings, and determined that the State had proved by a preponderance of evidence that Defendant had committed a new offense and violated a term of his probation. Ariz. R. Crim. P. 27.8(b)(3). The revocation proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure. Accordingly, we affirm the revocation of Defendant's probation.

¶6 As noted above, the Maricopa County court held a disposition hearing immediately after determining that Defendant had violated the terms of his probation. Rule 27.8(c)(1) provides that a court "must hold a disposition hearing no less than 7 nor more than 20 days after making a determination that the probationer has violated a condition or regulation of probation." However, a probationer may waive those time limits and "proceed immediately" to disposition. Rule 27.8(d). In this case, the court asked the parties if they wished to proceed immediately to disposition. The State responded affirmatively, but Defendant's attorney's response was somewhat ambiguous. He first asked whether the court had received a mitigation memorandum. After confirming that the court had reviewed the memorandum, defense counsel said "okay" and never objected to the prompt disposition hearing. Under these circumstances, we cannot find error, much less "fundamental error" that is "of such dimensions that it cannot be said it is possible for a defendant to have had a fair" disposition hearing. *State v. Thomas*, 130 Ariz. 432, 435-36 (1981) (quotations omitted). A consecutive sentence was appropriate, and the sentence imposed was within the statutory limits. *State v. Piotrowski*, 233 Ariz. 595, 598-99, ¶¶ 16-17 (App. 2014). Accordingly, we also affirm the disposition.

¶7 Pursuant to *State v. Shattuck*, 140 Ariz. 582, 584-85 (1984), Defendant's counsel's obligations in this appeal are at an end. Defendant has thirty days from the date of this decision in which to proceed, if he so desires, with an in propria persona motion for reconsideration or petition for review.

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