

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

TATE PAUL ALLEMAND, *Appellant*.

No. 1 CA-CR 18-0851

FILED 8-27-2019

Appeal from the Superior Court in Mohave County

No. S8015CR201701744

The Honorable Richard D. Lambert, Judge

AFFIRMED

COUNSEL

Arizona Attorney General's Office, Phoenix

By Joseph T. Maziarz

Counsel for Appellee

Janelle A. McEachern Attorney at Law, Chandler

By Janelle A. McEachern

Counsel for Appellant

MEMORANDUM DECISION

Presiding Judge Randall M. Howe delivered the decision of the Court, in which Judge Jennifer M. Perkins and Judge David D. Weintraub joined.

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H O W E, Judge:

¶1 This appeal is filed in accordance with *Anders v. California*, 386 U.S. 738 (1967) and *State v. Leon*, 104 Ariz. 297 (1969). Counsel for Tate Paul Allemand has advised this Court that counsel found no arguable questions of law and asks us to search the record for fundamental error. Allemand was given an opportunity to file a supplemental brief in propria persona; he has not done so. After reviewing the record, we affirm Allemand's conviction and sentence.

FACTS AND PROCEDURAL HISTORY

¶2 We view the facts in the light most favorable to sustaining the judgment and resolve all reasonable inferences against Allemand. See *State v. Fontes*, 195 Ariz. 229, 230 ¶ 2 (App. 1998). Allemand was originally charged with transportation of marijuana for sale (more than two pounds), a class 2 felony, and possession of marijuana for sale (more than four pounds), a class 2 felony. He pled guilty to attempted transportation of marijuana for sale, a class 3 felony, and the court placed him on probation. Allemand acknowledged and signed the terms of his probation, and he agreed to "comply with any written directive of [the probation department] to enforce compliance with the conditions of probation" and to "request and obtain written permission of [the probation department] prior to leaving the state[.]" The State moved to revoke Allemand's probation, alleging that he had violated the aforementioned conditions on three different occasions. At the probation violation hearing, the court received the following evidence.

¶3 On January 29, 2018, Allemand signed the terms of his probation. He then requested and received a two-week travel permit to travel to Louisiana to obtain money to pay the Interstate Compact transfer fee. The permit allowed Allemand to travel to Louisiana on January 30, but he had to return to Mohave County by February 12. In addition, the probation department ordered Allemand to report to the department on February 16.

¶4 On February 14, Allemand called his probation officer and stated that he could not return to Mohave County by February 16 and asked for an extension. The probation officer denied the extension and told Allemand that if he did not return by February 16, then the department would petition to revoke his probation and issue a warrant. Allemand called again on February 15, and he was reminded to return by February 16. He did not meet with the probation department on February 16.

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¶5 On March 20, Allemand left Louisiana to return to Mohave County by bus. Allemand met with the probation department on March 23 to discuss an Interstate Compact transfer. The probation department informed him that he needed to stay in Arizona until the transfer was approved, and he was instructed to return on March 24¹ to complete the Interstate Compact transfer. Another probation officer ordered Allemand to report to the probation department on April 11. He did not report to the probation department on either date. The court found that Allemand's failure to report to the probation department on February 16 and April 11 constituted two probation violations. It also found that Allemand's failure to return to Mohave County by February 12, as ordered by the travel permit, constituted a third probation violation.

¶6 The court conducted the sentencing hearing in compliance with Allemand's constitutional rights and Arizona Rule of Criminal Procedure 26. The court found two aggravating factors: (1) the pecuniary gain associated with transporting marijuana and (2) the presence of an accomplice. It also considered Allemand's taking responsibility for his actions at the time of sentencing as a mitigating factor. The court sentenced Allemand to three years' imprisonment and gave him 148 days' presentence incarceration credit. It also sentenced him to five months' community supervision to be served consecutive to his imprisonment term. Allemand timely appealed.

DISCUSSION

¶7 We review Allemand's conviction and sentence for fundamental error. *See State v. Flores*, 227 Ariz. 509, 512 ¶ 12 (App. 2011). Counsel for Allemand has advised this Court that after a diligent search of the entire record, counsel has found no arguable question of law. We have read and considered counsel's brief and fully reviewed the record for reversible error, *see Leon*, 104 Ariz. at 300, and find none. All of the proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure. So far as the record reveals, counsel represented Allemand at all stages of the proceedings, and the sentence imposed was within the statutory guidelines. We decline to order briefing and affirm Allemand's conviction and sentence.

¹ The record is unclear whether Allemand was supposed to return to the probation department on March 24 or March 26. Regardless, he did not report on either date.

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¶8 Upon the filing of this decision, defense counsel shall inform Allemand of the status of the appeal and of his future options. 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 (1984). Allemand shall have 30 days from the date of this decision to proceed, if he desires, with a pro per motion for reconsideration or petition for review.

CONCLUSION

¶9 For the foregoing reasons, we affirm.



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