

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: 03/09/2010  
PHILIP G. URRY, CLERK  
BY: GH

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

STATE OF ARIZONA, )  
 ) No. 1 CA-CR 09-0687  
 )  
 Appellee, ) DEPARTMENT E  
 )  
 v. ) **MEMORANDUM DECISION**  
 )  
 ROBERT DAVID GRAY, ) (Not for Publication -  
 ) Rule 111, Rules of the  
 Appellant. ) Arizona Supreme Court)  
 )  
 )

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Appeal from the Superior Court in Maricopa County

Cause No. CR 2001-095339

The Honorable Christine E. Mulleneaux, Judge Pro Tempore

**AFFIRMED**

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Terry Goddard, Arizona Attorney General Phoenix  
by Kent E. Cattani, Chief Counsel,  
Criminal Appeals/Capital Litigation Section  
Attorneys for Appellee

James Haas, Maricopa County Public Defender Phoenix  
by Spencer D. Heffel, Deputy Public Defender  
Attorneys for Appellant

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**H A L L**, Judge

¶1 Robert David Gray appeals from the revocation of his probation and the sentence imposed.

¶2 Defendant's appellate counsel filed a brief in accordance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), advising that, after a diligent search of the record, he was unable to find any arguable grounds for reversal. This court granted defendant an opportunity to file a supplemental brief, which he has not done. See *State v. Clark*, 196 Ariz. 530, 537, ¶ 30, 2 P.3d 89, 96 (App. 1999).

¶3 We review for fundamental error, error that goes to the foundation of a case or takes from the defendant a right essential to his defense. See *State v. King*, 158 Ariz. 419, 424, 763 P.2d 239, 244 (1988). We view the evidence presented at trial in a light most favorable to sustaining the verdict. *State v. Cropper*, 205 Ariz. 181, 182, ¶ 2, 68 P.3d 407, 408 (2003). Finding no reversible error, we affirm.

¶4 Defendant was charged by indictment with one count of sexual conduct with a minor, a class two felony and dangerous crime against children, in violation of Arizona Revised Statutes (A.R.S.) section 13-1405(A) (Supp. 2008). Defendant pled guilty to attempted sexual conduct with a minor, a class three felony and dangerous crime against children in the second degree. On December 6, 2001, the trial court suspended sentencing and

placed defendant on lifetime probation with a one-year term of incarceration in county jail as a condition of probation.

¶15 On July 16, 2009, defendant's probation officer filed a petition to revoke probation alleging defendant violated his probation by failing to: (1) maintain employment; (2) participate and cooperate in counseling, programs of assistance, sex offender treatment; and (3) actively participate and remain in sex offender treatment at Family Transition.

¶16 At the witness violation hearing, defendant's probation officer testified she reviewed the terms of probation with defendant. She informed defendant that he was to maintain full-time employment or apply for five to seven jobs per day and keep a log of where he applied. The probation officer and defendant's surveillance officer both testified that defendant was not employed except for a remodeling job that he worked five hours a week. They also testified that defendant never presented a log of jobs he applied for.

¶17 Defendant's probation officer also testified that defendant was discharged from Family Transitions for failure to participate. She also stated that he was thereafter referred to Psychological and Consulting Services (PCS). However, he was not accepted into PCS's program because he was found not to be amenable for treatment.

¶18 After the hearing, the trial court found defendant had violated his probation and reinstated defendant on lifetime probation. The trial court also placed defendant on house arrest until seen by his adult probation officer.

¶19 We have read and considered counsel's brief and have searched the entire record for reversible error. See *Leon*, 104 Ariz. at 300, 451 P.2d at 881. We find none. All of the proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure. Defendant was given an opportunity to speak before sentencing, and the sentence imposed was within statutory limits. Furthermore, based on our review of the record, there was sufficient evidence to find that defendant violated his probation.

¶10 After the filing of this decision, counsel's obligations pertaining to defendant's representation in this appeal have ended. Counsel need do no more than inform defendant of the status of the appeal and his future options, unless counsel's review reveals an issue appropriate for submission to the Arizona Supreme Court by petition for review. See *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984). Defendant has thirty days from the date of this

decision to proceed, if he desires, with a pro per motion for reconsideration or petition for review. Accordingly, defendant's conviction and sentence are affirmed.

  /s/  \_\_\_\_\_  
PHILIP HALL, Judge

CONCURRING:

  /s/  \_\_\_\_\_  
SHELDON H. WEISBERG, Presiding Judge

  /s/  \_\_\_\_\_  
JOHN C. GEMMILL, Judge