

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  
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IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

STATE OF ARIZONA, ) No. 1 CA-CR 09-0957  
)  
Appellee, ) DEPARTMENT D  
)  
) MEMORANDUM DECISION  
v. )  
) (Not for Publication -  
) Rule 111, Rules of the  
RANDY WAYNE CRIM, ) Arizona Supreme Court)  
)  
Appellant. )  
\_\_\_\_\_ )

Appeal from the Superior Court in Maricopa County

Cause No. CR2009-101638-001 SE

The Honorable James R. Morrow, 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 Christopher V. Johns, Deputy Public Defender  
Attorneys for Appellant

Randy Wayne Crim Florence  
Appellant

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**B R O W N**, Judge

¶1 Randy Wayne Crim appeals the superior court's order revoking his probation and the related disposition of imprisonment. Counsel for Crim filed a brief in accordance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 300-01, 451 P.2d 878, 881-82 (1969). Finding no arguable issues to raise, counsel requests that this court search the record for fundamental error. Crim was granted the opportunity to file a supplemental brief *in propria persona*, and has done so.

¶2 We review the superior court's determination that a defendant has violated probation for an abuse of discretion. See *State v. LeMatty*, 121 Ariz. 333, 335-36, 590 P.2d 449, 451-52 (1979). Accordingly, we will reverse only if the court's finding is "arbitrary and unsupported by any reasonable theory of evidence." *Id.* at 336, 590 P.2d at 452 (citation omitted). Finding no reversible error, we affirm.

¶3 In June 2009, Crim was placed on three years supervised probation as a result of his conviction for aggravated assault. Three months later, his probation officer filed a petition to revoke, alleging Crim violated ten conditions of his probation. The alleged violations included the consumption of alcohol and failures to report as directed, obtain an approved residence and employment, attend required

counseling, and pay probation fees. Crim denied the allegations and the court scheduled the matter for a witness violation hearing.

¶4 At the hearing, the State presented evidence showing that Crim acknowledged receipt of the conditions of his probation. The State also presented evidence that Crim had not reported as required, he was not living at an approved residence, and he had consumed alcohol. The court ruled that Crim violated these three terms of his probation and issued detailed findings of fact as to each violation. The court dismissed the remaining allegations for lack of evidence. Although Crim attempted to explain the violations he committed, he did not refute that he had in fact violated the terms of his probation.

¶5 At the conclusion of the witness violation hearing, Crim waived his right to a separate disposition hearing and the court sentenced him to three and one-half years in prison and to a term of community service equal to one-seventh of the prison term. Crim timely appealed.

¶6 In his supplemental brief, titled "Petition for Resentencing," Crim requests that we modify his sentence to a term of three years of supervised probation in lieu of his prison term. Crim asserts that he did not clearly understand at the time of his hearing that reinstatement of his supervised

probation was an option. He suggests that he could find more secure employment and housing and would be more capable of complying with the terms of his probation, should he be released. A sentencing decision, however, is within the sound discretion of the trial court and a sentence "will not be revised or reduced on appeal unless it [is] clearly . . . excessive." *Leon*, 104 Ariz. at 300, 451 P.2d at 881 (citations omitted); see also *State v. Stanley*, 123 Ariz. 95, 107, 597 P.2d 998, 1010 (App. 1979) ("[S]entencing is within the sound discretion of the trial court, and a sentence will be upheld if it is within the statutory limits, unless there is a clear abuse of discretion."). We find that Crim's sentence is within the statutory limits prescribed for his offense and we do not find it to be clearly excessive.

¶7 This court has reviewed the entire record for fundamental error and has found none. See *Leon*, 104 Ariz. at 300, 451 P.2d at 881. The probation revocation proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure. Crim was represented by counsel at all stages of the proceedings and was given the opportunity to speak prior to sentencing. Accordingly, we affirm the trial court's judgment finding Crim in violation of his probation and the resulting disposition.

¶18 Upon the filing of this decision, counsel shall inform Crim of the status of the appeal and his options. Defense 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, 684 P.2d 154, 156-57 (1984). Crim shall have thirty days from the date of this decision to proceed, if he so desires, with a *pro per* motion for reconsideration or petition for review.

/s/

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MICHAEL J. BROWN, Presiding Judge

CONCURRING:

/s/

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JON W. THOMPSON, Judge

/s/

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SHELDON H. WEISBERG, Judge