

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: 10/04/2011
RUTH A. WILLINGHAM,
CLERK
BY: DLL

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) No. 1 CA-CR 11-0135
)
) DEPARTMENT D
)
Appellee,) **MEMORANDUM DECISION**
) (Not for Publication -
v.) Rule 111, Rules of the
) Arizona Supreme Court)
PETER MOHAMMED SHARMA,)
)
Appellant.)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. CR2005-011597-001 DT

The Honorable Michael W. Kemp, Judge

AFFIRMED

Thomas C. Horne, Arizona Attorney General Phoenix
By Kent E. Cattani, Chief Counsel,
Criminal Appeals/Capital Litigation Division
And Joseph T. Mariarz, Assistant Attorney General
Attorneys for Appellee

Stephen B. Manion Laveen
Attorney for Appellant

S W A N N, Judge

¶1 Peter Mohammed Sharma ("Defendant") appeals a sentence of four years imprisonment imposed after he violated the terms of his probation. Defendant's probation arose from his guilty

plea to Fraudulent Schemes and Artifices, a class 2 felony. Because the trial court acted within its discretion, we affirm.

*FACTS AND PROCEDURAL HISTORY*¹

¶12 In February 2006, Defendant pled guilty to having committed Fraudulent Schemes and Artifices, a class 2 felony, between October 8, 2004 and May 3, 2005. On April 28, 2006, the court placed Defendant on five years probation, which was set to begin upon his release from imprisonment for an unrelated conviction.

¶13 On January 28, 2011, the trial court found that Defendant had violated the "white collar" provisions of his parole, which required Defendant to report his financial activities to the Adult Probation Department for supervision. Defendant does not appeal that finding.

¶14 At the disposition hearing, the court found that Defendant had "continuously engaged" in "a pattern" of behavior that was meant to help Defendant "avoid detection" while doing "all kinds of things that [were] clearly inconsistent with [his] white collar terms." The court concluded that further probation would not be effective. Finding that the mitigating factors outweighed the aggravating factors, the court imposed the

¹ We view the facts in the light most favorable to upholding the sentence. *State v. Gallegos*, 178 Ariz. 1, 9, 870 P.2d 1097, 1105 (1994).

"minimum sentence" of four years in prison, with credit for seven days of presentence incarceration.

DISCUSSION

¶15 "Probation is a judicial order allowing a criminal defendant a period of time in which to perform certain conditions and thereby avoid imposition of a sentence. . . . If the conditions of probation are not performed, however, the court may vacate the order suspending the imposition of sentence, and then impose sentence" *State v. Muldoon*, 159 Ariz. 295, 298, 767 P.2d 16, 19 (1988).

¶16 Trial courts have broad discretion in sentencing; if a sentence is within statutory limits, we will not modify or reduce a sentence unless it was clearly an abuse of discretion. *State v. Grier*, 146 Ariz. 511, 515, 707 P.2d 309, 313 (1985). "An abuse of discretion in sentencing is characterized by capriciousness, arbitrariness or by failure to conduct an adequate investigation into facts necessary for an intelligent exercise of the court's sentencing power." *Id.*

¶17 A.R.S. § 13-702(A)(2004) prescribes a sentencing range of four to ten years imprisonment for a class 2 non-dangerous, non-repetitive felony with no historical prior convictions. However, a court may reduce the sentence to three years if it finds there are at least two substantial mitigating factors. A.R.S. § 13-702.01(B)(2004).

¶18 Here, before imposing sentence, the trial court reviewed a disposition report prepared by Defendant's parole officer. The court heard oral arguments from the state and from Defendant's counsel, considered a statement made on Defendant's behalf by his ex-wife, and finally heard from Defendant himself. The court then found that Defendant's age, health problems and family circumstances were mitigating factors, and that although "[t]here certainly [were] aggravating factors," the mitigating factors outweighed them. For that reason, the court imposed the minimum sentence prescribed by A.R.S. § 13-702(A)(2004). On this record, we cannot conclude that the court was capricious or arbitrary, or that it failed to investigate the necessary facts.

¶19 Defendant argues on appeal that the sentence is an unfair punishment for "three technical violations of his probation," and that he has already been "punished severely for his efforts." Defendant misconstrues his situation: the court did not sentence him for violating his probation. He was sentenced for pleading guilty to a class 2 felony, a sentence that his probation had deferred. See *Muldoon*, 159 Ariz. at 298, 767 P.2d at 19. Defendant had the opportunity to avoid that sentence, but relinquished it when he violated his probation. *Id.*

CONCLUSION

¶10 For the reasons given, we affirm Defendant's sentence.

/s/

PETER B. SWANN, Presiding Judge

CONCURRING:

/s/

JON W. THOMPSON, Judge

/s/

JOHN C. GEMMILL, Judge