

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED  
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz.R.Sup.Ct. 111(c); ARCAP 28(c);  
Ariz.R.Crim.P. 31.24

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE



DIVISION ONE  
FILED: 12/08/2011  
RUTH A. WILLINGHAM,  
CLERK  
BY: DLL

STATE OF ARIZONA,

Appellee,

v.

TERRY ALLEN ZOGG,

Appellant.

1 CA-CR 11-0070

DEPARTMENT A

**MEMORANDUM DECISION**

(Not for Publication -  
Rule 111, Rules of the  
Arizona Supreme Court)

Appeal from the Superior Court in Mohave County

Cause No. CR2010-00322

The Honorable Steven F. Conn, Judge

**AFFIRMED**

---

Thomas C. Horne, Attorney General  
By Kent E. Cattani, Chief Counsel  
Criminal Appeals/Capital Litigation Division  
Attorneys for Appellee

Phoenix

Jill L. Evans, Mohave County Appellate Defender  
Attorney for Appellant

Kingman

---

**I R V I N E**, Judge

¶1 Terry Allen Zogg appeals the revocation of his probation and the resulting sentences. In accordance with *Anders v. California*, 386 U.S. 738 (1967) and *State v. Leon*, 104 Ariz.

297, 451 P.2d 878 (1969), counsel for Zogg asks this Court to search the record for fundamental error. Zogg was given an opportunity to file a supplemental brief in propria persona, but he has not done so. After reviewing the record, we affirm.

#### **FACTS AND PROCEDURAL HISTORY**

¶2 We view the facts in the light most favorable to sustaining the trial court's judgment and resolve all reasonable inferences against Zogg. *State v. Fontes*, 195 Ariz. 229, 230, ¶ 2, 986 P.2d 897, 898 (App. 1998). While serving probation for three underlying class 4 felonies (two counts of burglary and one count of forgery), Zogg attempted to steal a hat from a store. The State charged Zogg with violating probation by failing to obey the law (Condition #1). The State also made other allegations, including that Zogg failed to report to jail to serve a ninety-day sentence for the underlying felonies (Condition #21).<sup>1</sup>

¶3 At a contested hearing, Zogg admitted that he had notice of the order, but failed to report to jail. Zogg denied shoplifting. Based on video surveillance evidence and testimony from a store clerk, the trial court found by a preponderance of

---

<sup>1</sup> Two other allegations that Zogg violated probation were dismissed: Condition #4, failing to reside at an approved location; and Condition #9, failing to submit to drug and alcohol tests.

the evidence that Zogg shoplifted the hat and thus failed to obey the law.

¶4 The trial court conducted the sentencing hearing in compliance with Zogg's constitutional rights and Rule 26 of the Arizona Rules of Criminal Procedure. The trial court sentenced Zogg to a one-year mitigated prison sentence for the underlying forgery offense, with credit for eighty-four days of presentence incarceration. Finding that the underlying burglary offenses involved different victims and were temporally and geographically distinct, the court sentenced Zogg to mitigated one-year prison terms, with no presentence credit, to be served consecutive to each other and the forgery count. The court ordered no restitution.

#### DISCUSSION

¶5 We review Zogg's probation revocation for fundamental error. See *State v. Gendron*, 168 Ariz. 153, 155, 812 P.2d 626, 628 (1991). The State must prove by a preponderance of the evidence that Zogg violated his probation. *State v. Moore*, 125 Ariz. 305, 306, 609 P.2d 575, 576 (1980).

¶6 Counsel for Zogg has advised this Court that after a diligent search of the entire record, he 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, 451 P.2d at 881. We find none. All of the

proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure. So far as the record reveals, Zogg was represented by counsel at all stages of the proceedings and the sentences imposed were within the statutory limits. We decline to order briefing, and we affirm the probation revocation and sentences.

¶17 Upon the filing of this decision, defense counsel shall inform Zogg of the status of his appeal and of his future 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). Upon the Court's own motion, Zogg shall have thirty days from the date of this decision to proceed, if he desires, with a proper motion for reconsideration or petition for review.

**CONCLUSION**

¶18 We affirm.

/s/  
\_\_\_\_\_  
PATRICK IRVINE, Judge

CONCURRING:

/s/  
\_\_\_\_\_  
ANN A. SCOTT TIMMER, Presiding Judge

/s/  
\_\_\_\_\_  
DANIEL A. BARKER, Judge