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See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24



DIVISION ONE  
FILED: 03/29/2012  
RUTH A. WILLINGHAM,  
CLERK  
BY: sls

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

STATE OF ARIZONA, ) 1 CA-CR 11-0463  
)  
Appellee, ) DEPARTMENT E  
)  
v. ) **MEMORANDUM DECISION**  
) (Not for Publication -  
) Rule 111, Rules of the  
) Arizona Supreme Court)  
JOSEPH JOSHUA RAOOFI, )  
)  
Appellant. )  
)

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Appeal from the Superior Court in Maricopa County

Cause No. CR2007-107179-001

The Honorable Jeffrey A. Rueter, Judge Pro Tempore

**AFFIRMED**

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Thomas C. Horne, Attorney General Phoenix  
By Kent E. Cattani, Chief Counsel,  
Criminal Appeals/Capital Litigation Section  
and Angela C. Kebric, Assistant Attorney General  
Attorneys for Appellee

James J. Haas, Maricopa County Public Defender Phoenix  
By Cory Engle, Deputy Public Defender  
Attorneys for Appellant

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G E M M I L L, Judge

¶1 Joseph Raofi appeals the trial court's adjudication that he violated his standard probation conditions when he failed to submit to drug testing on March 24 and April 14, 2011 ("Condition #9"). Raofi raises one issue on appeal, whether the State provided sufficient evidence to support the trial court's finding that Raofi violated his probation conditions.<sup>1</sup> For the reasons outlined below, we affirm.

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

¶2 Raofi was placed on supervised probation after a plea agreement in 2007 on charges of criminal damage. Condition #9 of the uniform conditions of Raofi's supervised probation required him to submit to drug and alcohol testing as directed by the Adult Probation Department ("APD") or the court. Subsequently, Raofi violated his initial probation and was placed on intensive probation. Raofi was required under Condition #9 to continue submitting to the directives of APD or the court concerning drug and alcohol testing. Based on his compliance and satisfactory performance, Raofi's "intensive" probation officer requested a modification of Raofi's probation conditions and a reclassification from intensive to standard probation. The intensive probation officer requested the deletion of Condition #21 because Raofi complied with the terms

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<sup>1</sup> Raofi's notice of appeal indicates that he is also appealing the disposition imposed by the court, but he raises no issue regarding the disposition in his opening brief.

of his intensive probation and completed 560 hours of community restitution.<sup>2</sup> The court granted the modification request on January 11, 2011 leaving all other standard conditions intact, including Condition #9.

¶13 On June 1, 2011, Raofi's probation officer, Richard B., filed a petition to revoke Raofi's probation. Richard B. alleged, among other things, that Raofi failed to take two required drug tests, on March 24 and April 14, 2011.

¶14 The court conducted a probation violation hearing on June 13, 2011. Richard B. testified that Raofi was part of a "colors program" and Raofi's color was jade. This meant that Raofi was supposed to contact the Treatment Assessment Screening Center ("TASC") every morning and evening to see if his color (generated by random computer selection) was chosen for drug testing.

¶15 Richard B. was the only witness that offered testimony at the revocation hearing; Raofi did not testify on his own behalf. The trial court concluded that Raofi violated his probation because he failed to comply with the terms of Condition #9. The trial court reinstated Raofi's three years of standard probation and required him to serve one month in jail as an additional condition of probation.

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<sup>2</sup> Condition 21 required Raofi to serve two months in jail and participate in work furlough.

¶16 Raoofi timely appeals, and we have jurisdiction based on Article 6, Section 9, of the Arizona Constitution, and Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1) (2003), 13-4031 (2010), and 13-4033(A) (2010).<sup>3</sup>

#### ANALYSIS

¶17 Raoofi argues that the trial court abused its discretion by finding that he was provided written terms of his probation requiring him to submit to drug and alcohol testing with TASC. Raoofi contends there was insufficient evidence for the trial court to make such a finding and the conditions of probation must be in writing pursuant to Arizona Rules of Criminal Procedure ("Rule(s)") 27.1.

¶18 Raoofi supports his argument with *State v. Robinson*, 177 Ariz. 543, 545, 869 P.2d 1196, 1198 (1994). *Robinson* confirms that probation conditions need to be in writing when the State seeks probation revocation. *Id.*; see also *State v. Jones*, 163 Ariz. 498, 499, 788 P.2d 1249, 1250 (App. 1990) (requiring TASC program directives to be in writing for revocation purposes).

¶19 We will not reverse any of the trial court's findings in a probation revocation proceeding unless the findings are unsupported by any theory of evidence or are arbitrary in

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<sup>3</sup> Absent material revisions to a statute after the date of an offense, we cite the current version.

nature. See *State v. Stotts*, 144 Ariz. 72, 79, 695 P.2d 1110, 1117 (1985). Evidence adduced during a violation hearing is “not insufficient simply because the testimony is conflicting.” *State v. Thomas*, 196 Ariz. 312, 313, ¶ 3, 996 P.2d 113, 114 (App. 1999). The trial court is in the best position to adjudge the credibility of witnesses and resolve any conflicting testimony. *Id.* A parole violation must be proven by a preponderance of the evidence. See Rule 27.8(b)(3).

¶10 The State’s witness, Richard B., was unable to produce the TASC printout that showed whether Raofi did in fact miss both tests because the computer system purges itself every sixty days and the recorded information had not been preserved.

¶11 However, the trial court did receive Raofi’s behavior agreement and behavior report into evidence. Richard B. testified that both he and Raofi signed each document. Both documents state that Raofi missed testing on March 24 and April 14, 2011. Richard B. confirmed the nature and rationale of the documents: Raofi missed two tests, and Raofi “needed to test as required.” Additionally, both documents contain standard language just above the signature line that asked Raofi whether he read the documents, understood the documents, and had the documents explained to him. On this record, we agree with the trial court that Raofi admitted in these documents that he missed the two required tests.

¶12 Raofifi was given written probation conditions which contained standard uniform conditions including Condition #9 on at least two occasions. Raofifi was given his initial set of uniform conditions of supervised probation in November of 2007, and another set in October of 2009 after an unrelated probation violation. Raofifi's signature is included on the uniform probation conditions forms.

¶13 The evidence before the trial court indicates that Raofifi's intensive probation officer, when recommending that his supervision be reduced from intensive to standard, stated that he had been drug and alcohol free while on intensive probation. Thus, the evidence is sufficient to support the trial court's determination that Raofifi knew he was required to submit to substance tests. Raofifi's excuse that he did not think he was required to continue TASC testing because his probation status was reduced is not convincing. Nothing in the record supports that Condition #9 was removed, suspended, or was no longer applicable to Raofifi's probation requirements.

¶14 Richard B. further testified that Raofifi was subject to the terms of his probation, including mandatory drug testing. Richard B. stated that Raofifi was directed to use the TASC colors system. Moreover, the trial court asked Richard B. whether he gave a written directive to Raofifi regarding Condition #9, or whether drug testing was part of Raofifi's

standard conditions. Richard B. replied that Raofi was given a directive when he first met him.

¶15 The trial court, relying on *State v. Tucker*, 124 Ariz. 120, 122, 602 P.2d 501, 503 (App. 1979), concluded that the State met its burden of proving that Raofi violated his probation – specifically, Condition #9, by failing to submit to a test on two occasions. We find *Tucker* persuasive. *Tucker* concludes that absent evidence to the contrary, a probation officer’s testimony that a defendant was given a written copy of his probation conditions is sufficient evidence for the trial court to make a valid finding. *See id.*

¶16 Here, Raofi did not refute the statements offered by Richard B. with any evidence. Nor did Raofi provide any evidence that the behavior agreement and behavior report were not admissions that Raofi missed two mandatory tests. Richard B. stated that Raofi was given written terms of his probation conditions and a written directive to test with TASC.

¶17 We conclude that there was sufficient evidence to sustain the trial court’s determination that Raofi failed to take two mandatory drug or alcohol tests and therefore, he violated the conditions of his probation.

#### **CONCLUSION**

¶18 For the foregoing reasons, we affirm the trial court determination of a probation violation and subsequent

