

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

FILED BY CLERK

MAY 14 2013

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2012-0349
)	2 CA-CR 2012-0350
Appellee,)	(Consolidated)
)	DEPARTMENT B
v.)	
)	<u>MEMORANDUM DECISION</u>
NICHOLAS ELIAS MACIAS,)	Not for Publication
)	Rule 111, Rules of
Appellant.)	the Supreme Court
_____)	

APPEAL FROM THE SUPERIOR COURT OF COCHISE COUNTY

Cause Nos. CR201000393 and CR201100105

Honorable James L. Conlogue, Judge

AFFIRMED

John R. Gustafson

Tempe
Attorney for Appellant

V Á S Q U E Z, Presiding Judge.

¶1 Nicholas Macias appeals from the trial court’s July 2012 orders finding him in violation of probation and reinstating him on concurrent terms of supervised probation, the longer of which will terminate on September 9, 2014. As a condition of his probation, the court further ordered that Macias serve thirty days’ incarceration, with the incarceration “deferred during any and all periods of time in which [he] is fully compliant with the terms and conditions of probation.” Counsel has filed a brief citing *Anders v. California*, 386 U.S. 738 (1967), and *State v. Clark*, 196 Ariz. 530, ¶ 30, 2 P.3d 89, 96 (App. 1999), avowing he has reviewed the record and found no non-frivolous ground for appeal. Consistent with *Clark*, he has provided “a detailed factual and procedural history of the case with citations to the record,” 196 Ariz. 530, ¶ 32, 2 P.3d at 97, and asks this court to conduct an independent review of the record. Macias has not filed a supplemental brief.

¶2 Viewed in the light most favorable to upholding the court’s finding of a probation violation, *see State v. Vaughn*, 217 Ariz. 518, n.2, 176 P.3d 716, 717 n.2 (App. 2008), the evidence established that Macias was placed on concurrent, three-year terms of probation after pleading guilty to theft, in Cochise County Superior Court Cause No. CR 201000393, and to attempted unlawful use of a means of transportation, in Cochise County Superior Court Cause No. CR201100105.¹ Macias acknowledged receipt of the written conditions of his probation, which included, in relevant part, his agreement to “provide the [Adult Probation Department (APD)] safe, unrestricted access to [his]

¹The probation terms commenced on June 1, 2010, in Cause No. CR 201000393, and on March 7, 2011, in Cause No. CR201100105.

residence and to receive prior approval of the APD before changing [his] residence”; to “report . . . as directed” to the APD; and to “be financially responsible by paying all restitution, fines, and fees . . . imposed by the Court,” specifically by making monthly payments of \$105. In May 2012, an adult probation officer filed a petition to revoke Macias’s probation, alleging Macias had violated these conditions.

¶3 At a contested probation violation hearing, Stephanie Schaaf, a Cochise County Adult Probation Officer, testified Macias had made only a single payment, in the amount of \$15, during the course of his probation. The officer also testified about records kept by a Maricopa County probation officer,² who had reported that Macias’s residence appeared to be vacant, although he had not obtained approval to move. The same records showed that, although a probation officer had directed Macias to report to the probation office in May 2012, he had failed to do so.

¶4 A probation violation may be established by a preponderance of the evidence, and “[t]he court may receive any reliable evidence not legally privileged, including hearsay.” Ariz. R. Crim. P. 27.8(b)(3). We will uphold a trial court’s finding of a violation “unless it is arbitrary or unsupported by any theory of evidence,” *State v. Moore*, 125 Ariz. 305, 306, 609 P.2d 575, 576 (1980). The court’s findings here were supported by the evidence, and the proceedings were conducted in accordance with the law, and the continuation of Macias’s probation was an authorized disposition. *See* Ariz.

²To accommodate Macias’s desire to live in Maricopa County, Schaaf had arranged for his “inter-county transfer” to Maricopa County, with the Maricopa County APD providing “courtesy supervision” of Macias while the Cochise County APD retained jurisdiction of the case.

R. Crim. P. 27.8. In our examination of the record pursuant to *Anders*, we have found no reversible or fundamental error and no arguable issue warranting further appellate review.

¶5 Accordingly, we affirm the trial court's findings of probation violations and dispositions.

/s/ Garye L. Vásquez

GARYE L. VÁSQUEZ, Presiding Judge

CONCURRING:

/s/ Philip G. Espinosa

PHILIP G. ESPINOSA, Judge

/s/ Virginia C. Kelly

VIRGINIA C. KELLY, Judge