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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA, Appellee, v. RODGER D. FRANKLIN, Appellant.	)	2 CA-CR 2012-0420 DEPARTMENT A MEMORANDUM DECISION Not for Publication Rule 111, Rules of the Supreme Court

APPEAL FROM THE SUPERIOR COURT OF COCHISE COUNTY

Cause No. CR200500920

Honorable John F. Kelliher Jr., Judge

AFFIRMED

Harriette P. Levitt — Tucson
Attorney for Appellant

E C K E R S T R O M, Presiding Judge.

¶1 Rodger Franklin appeals from the trial court's order revoking his probation and sentencing him to a "slightly mitigated," seven-year term of imprisonment. Counsel has filed a brief in compliance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999), stating she has reviewed the record on appeal and "has found no arguable issues on appeal." Counsel has asked us to search the record for reversible error. Franklin has filed a supplemental brief in which he requests,

without citation to authority or legal basis, that this court reduce his sentence from seven years to five.

¶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 the following. Franklin, who had been convicted of attempted molestation of a child under fifteen years of age, was placed on intensive probation in October 2011, and the terms of that probation required, inter alia, that he not consume any alcohol, that he always "be at his residence or an approved place," that he attend sex offender treatment, and that he not go to the Good Neighbor Alliance, a local homeless shelter. Franklin's urine tested positive for alcohol in January 2012, he did not attend scheduled sex-offender treatment sessions in February and April 2012, he was at unapproved locations on several occasions, and he went to Good Neighbor Alliance.

¶3 A probation violation may be established by a preponderance of the evidence, Ariz. R. Crim. P. 27.8(b)(3), and 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 record,[1] and the sentence imposed upon revocation of Franklin's

[1]Although the court's findings as a whole are supported by the record, it appears to have misstated one finding in its oral pronouncement. The court stated Franklin had been at a restaurant which was "not approved by his [probation] team." But the record on this point is confusing. The petition alleged Franklin had been at a location, the restaurant, not approved by his team. But his surveillance officer instead testified he worked at that restaurant and had not been there when he was supposed to be. On the other hand, Franklin was questioned as to why he had been at the restaurant when he was not supposed to be and stated he had been called into work. Thus, although there is evidence

probation was within the range authorized by law. *See* A.R.S. §§ 13-705(D),(J),(O); 13-1001; 13-1410(A).[2]

¶4 In our examination of the record pursuant to *Anders*, we have found no reversible error. *See State v. Fuller*, 143 Ariz. 571, 575, 694 P.2d 1185, 1189 (1985) (*Anders* requires court to search record for fundamental error). And we reject Franklin's unsupported request to reduce his sentence. *See* Ariz. R. Crim. P. 31.13(c)(1)(vi). Accordingly, we affirm the trial court's findings of probation violations, its revocation of Franklin's probation, and the sentence imposed.

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

/s/ Michael Miller
MICHAEL MILLER, Judge

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in the record to support the court's ultimate conclusion in its minute entry that Franklin had violated his probation by being in an unapproved location on the date alleged and thereby failing to "[s]trictly comply with [his] weekly . . . schedule," we cannot say the court's specific finding as stated orally on the record was supported by the evidence. This error does not, however, constitute fundamental, reversible error.

[2]The Arizona criminal sentencing code has been renumbered, effective "from and after December 31, 2008." 2008 Ariz. Sess. Laws, ch. 301, § 120; *see also* 2008 Ariz. Sess. Laws, ch. 301, §§ 15-35, 119. For ease of reference and because no changes in the statutes are material to the issues in this case, *see id.* § 119, we refer in this decision to the current section numbers rather than those in effect at the time of Franklin's offense in 2004. *See* 2001 Ariz. Sess. Laws, ch. 334, § 1; 1993 Ariz. Sess. Laws, ch. 255, § 29.