

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

APR 15 2013

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2012-0453
)	DEPARTMENT B
Appellee,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
JESUS MARIA GRIJALVA,)	the Supreme Court
)	
Appellant.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. S1100CR201002114

Honorable Dwight P. Callahan, Judge Pro Tempore

AFFIRMED

Harriette P. Levitt

Tucson
Attorney for Appellant

V Á S Q U E Z, Presiding Judge.

¶1 Jesus Grijalva appeals from the trial court’s orders revoking his probation and sentencing him to the presumptive prison term of 2.5 years. Counsel has filed a brief in compliance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), stating she “has found no arguable issues on appeal” and asking us to review the record for error. Grijalva has not filed a supplemental brief. We affirm.

¶2 Pursuant to a plea agreement, Grijalva was convicted in 2010 of possession of marijuana for sale, a class four felony. *See* A.R.S. § 13-3405(A)(2), (B)(4). The trial court suspended the imposition of sentence and placed Grijalva on supervised probation for three years. In 2011, the probation department filed a petition to revoke Grijalva’s probation alleging, among other things, that he had committed a federal offense on May 21, 2011. After a contested hearing, the court found Grijalva had violated his probationary terms by committing the federal offense of “bulk cash smuggling” in violation of condition one of his probation which requires he “maintain a crime-free lifestyle by obeying all laws, and not engaging or participating in any criminal activity.”

¶3 A probation violation must be established by a preponderance of the evidence. *See* Ariz. R. Crim. P. 27.8(b)(3). We will uphold a trial court’s finding of a probation 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). 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), we find there was sufficient evidence Grijalva violated the terms of his probation by being convicted in federal court

of bulk cash smuggling. And the sentence imposed upon the revocation of Grijalva's probation was within the range authorized by law. *See* A.R.S. § 13-702.

¶4 In accordance with our obligation under *Anders*, we have reviewed the record for fundamental, reversible error and have found none. We thus affirm the trial court's determination that Grijalva violated the terms of his probation, its revocation of his probation, and the sentence imposed.

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

CONCURRING:

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Judge*

*A retired judge of the Arizona Court of Appeals authorized and assigned to sit as a judge on the Court of Appeals, Division Two, pursuant to Arizona Supreme Court Order filed December 12, 2012.