

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION TWO

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THE STATE OF ARIZONA,  
*Appellee,*

*v.*

DANNY RAY KEE JR.,  
*Appellant.*

No. 2 CA-CR 2013-0044  
Filed November 13, 2013

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THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION

*See* Ariz. R. Sup. Ct. 111(c); Ariz. R. Crim. P. 31.24

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Appeal from the Superior Court in Cochise County  
No. S0200CR201100680  
The Honorable John F. Kelliher Jr., Judge

**AFFIRMED**

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COUNSEL

Daniel J. DeRienzo, Prescott Valley

*Counsel for Appellant*

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**MEMORANDUM DECISION**

Presiding Judge Vásquez authored the decision of the Court, in which Chief Judge Howard and Judge Miller concurred.

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V Á S Q U E Z, Presiding Judge:

¶1 Appellant Danny Ray Kee Jr. appeals from the revocation of his probation following a hearing and the prison term imposed on the underlying offense of weapons misconduct. 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), avowing he searched the record on appeal and has found no error and requesting that this court search the record for “reversible error.” Kee has not filed a supplemental brief.

¶2 The record establishes Kee was placed on three years’ probation in October 2011 after he was convicted of weapons misconduct pursuant to a plea agreement. In November 2012, the state filed a petition to revoke probation alleging eleven instances in which Kee had violated various probation conditions. After a two-part violation hearing that concluded in January 2013, the trial court found the state had established by a preponderance of the evidence that Kee had violated probation conditions as alleged in six of the eleven allegations in the petition. The trial court revoked probation and sentenced Kee to an aggravated prison term of three years.

¶3 The record contains sufficient evidence to support the trial court’s finding that a preponderance of the evidence established Kee had violated conditions of his probation as alleged in counts two, five, six, eight, ten, and eleven of the petition to revoke probation. Ariz. R. Crim. P. 27.8(b)(3) (to constitute violation of conditions of probation, violation “must be established by a preponderance of the evidence,” and court may consider “any reliable evidence not legally privileged, including hearsay”). Given the testimony presented, counsel’s concessions at the end of the

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hearing as to some of the allegations, and exhibits provided, the court did not abuse its discretion. *See State v. Watkins*, 125 Ariz. 570, 573, 611 P.2d 923, 926 (1980) (appellate court will disturb factual findings made by trial court relative to defendant's alleged violation of probation only if findings are "arbitrary and unsupported by any reasonable theory of the evidence"). Nor have we found error, much less reversible error, with respect to the revocation process, including the charging of the instances Kee allegedly violated probation and the hearing.

¶4 Additionally, we have reviewed the record as requested and have found no reversible error with respect to the trial court's decision to revoke probation. Nor can we say the trial court abused its discretion in this regard. *See State v. Thomas*, 196 Ariz. 312, ¶ 3, 996 P.2d 113, 114 (App. 1999) (appellate court reviews trial court's revocation of probation for abuse of discretion). Similarly, we have found neither reversible error nor an abuse of discretion with respect to the court's imposition of the aggravated prison term; the sentence fell within the applicable statutory parameters and was imposed in a lawful manner. *See State v. McPherson*, 228 Ariz. 557, ¶ 4, 269 P.3d 1181, 1183 (App. 2012) (illegal sentence constitutes fundamental, prejudicial error); *see also State v. Dawson*, 164 Ariz. 278, 281, 792 P.2d 741, 744 (1990) ("[F]ailure to impose a sentence in conformity with the mandatory provisions of the sentencing statute makes that sentence 'illegal.'"); *State v. Anderson*, 181 Ariz. 18, 19-20, 887 P.2d 548, 549-50 (App. 1993) (sentence illegal when imposed in unlawful manner by court's failure to consider material information); *State v. House*, 169 Ariz. 572, 573, 821 P.2d 233, 234 (App. 1991) (sentence outside applicable range illegal). Consequently, we affirm the revocation of Kee's probation and the sentence imposed.