

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

---

THE STATE OF ARIZONA,  
*Appellee,*

*v.*

ISHMAEL CHERUBIM HARRIS,  
*Appellant.*

No. 2 CA-CR 2016-0252  
Filed May 4, 2017

---

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NOT FOR PUBLICATION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)(1); Ariz. R. Crim. P. 31.24.*

---

Appeal from the Superior Court in Cochise County

No. CR201400075

The Honorable Wallace R. Hoggatt, Judge

**AFFIRMED**

---

COUNSEL

John William Lovell, P.C., Tucson  
By John William Lovell  
*Counsel for Appellant*

STATE v. HARRIS  
Decision of the Court

---

**MEMORANDUM DECISION**

Chief Judge Eckerstrom authored the decision of the Court, in which Presiding Judge Vásquez and Judge Howard<sup>1</sup> concurred.

---

ECKERSTROM, Chief Judge:

¶1 Ishmael Harris appeals from the trial court's order revoking the term of intensive supervised probation it had imposed in July 2015 after he pled guilty to attempted possession of marijuana for sale, and sentencing him to the presumptive, 1.5-year prison term. Appointed counsel has filed a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), and *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999), stating he found no arguable question of law to raise and requesting that this court review the record for fundamental error.

¶2 This court will uphold a trial court's finding that a defendant violated probation unless that finding "is arbitrary or unsupported by any theory of evidence." *State v. Moore*, 125 Ariz. 305, 306, 609 P.2d 575, 576 (1980). We view the evidence in the light most favorable to upholding the court's ruling. *State v. Vaughn*, 217 Ariz. 518, n.2, 176 P.3d 716, 717 n.2 (App. 2008).

¶3 Harris's initial term of intensive probation supervision (IPS), imposed in 2015, was reinstated on March 4, 2016, after his first revocation proceeding. Harris's probation officer filed a second petition to revoke in the beginning of April 2016.

¶4 As in the previous revocation proceeding, Harris chose to represent himself; the trial court appointed advisory counsel to

---

<sup>1</sup>The Hon. Joseph W. Howard, a retired judge of this court, is called back to active duty to serve on this case pursuant to orders of this court and our supreme court.

STATE v. HARRIS  
Decision of the Court

assist him. The court found the waiver of counsel was knowing, voluntary and intelligent.

¶5 After a violation hearing in May, the trial court found a preponderance of the evidence established Harris had violated the conditions of probation as alleged in the last two allegations of the April 6, 2016 petition: on or about March 28, he failed to inform the probation department of where he was living and his whereabouts were unknown; and, on March 29 he failed to report to the probation department and submit his IPS weekly activity schedule. *See* Ariz. R. Crim. P. 27.8(b)(3) (probation violation must be proved by preponderance of the evidence). The evidence supports that finding. As requested, we have reviewed the record for fundamental error, but we have found no error, much less error that can be characterized as fundamental and prejudicial.

¶6 At the disposition hearing on June 3, 2016, the trial court noted that Harris had requested that probation be revoked and that the court sentence him to a mitigated prison term and if that was not possible, then reinstate him on IPS. The court continued the disposition hearing to give Harris the opportunity to present testimony by his wife and mother-in-law.

¶7 After the continued disposition hearing on June 8, 2016, the trial court revoked probation and sentenced Harris to the presumptive prison term of 1.5 years, with 268 days' presentence incarceration credit. Harris was released from the Arizona Department of Corrections in October 2016, his period of supervision has passed, and his sentence has expired. Although the court's decision to revoke probation arguably is not moot, *see State v. Nihiser*, 191 Ariz. 199, 204, 953 P.2d 1252, 1257 (App. 1997), the propriety of the prison term is and we do not address it. The court did not abuse its discretion in revoking probation, nor do we find any fundamental error in the record before us. *See State v. Sanchez*, 19 Ariz. App. 253, 254, 506 P.2d 644, 645 (1973) (court's decision to revoke probation will not be disturbed absent abuse of discretion).

STATE v. HARRIS  
Decision of the Court

¶8 The trial court's orders finding Harris violated probation and revoking probation are affirmed. The propriety of the disposition as it relates to the prison term, however, is moot.