IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

STEVEN ANTHONY BURGESS,
Appellant.

No. 2 CA-CR 2019-0151
Filed June 16, 2020

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NOT FOR PUBLICATION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. 31.19(e).

Appeal from the Superior Court in Pinal County
No. S1100CR2000027114
The Honorable Patrick K. Gard, Judge

AFFIRMED

COUNSEL

Mark Brnovich, Arizona Attorney General
Michael T. O'Toole, Chief Counsel
By Amy Pignatella Cain, Assistant Attorney General, Tucson
Counsel for Appellee

Harriette P. Levitt, Tucson
Counsel for Appellant

MEMORANDUM DECISION

Judge Eckerstrom authored the decision of the Court, in which Presiding Judge Eppich and Judge Espinosa concurred.

E C K E R S T R O M, Judge:

¶1 Steven Burgess appeals from the sentence imposed following the revocation of his probation after a contested probation violation hearing. He argues the trial court "failed to properly balance the aggravating and mitigating factors" in imposing a maximum sentence. We affirm.

¶2 In March 2001, Burgess pled guilty to two counts of attempted child molestation. The trial court imposed a fifteen-year prison term for one count and, for the second, suspended the imposition of sentence and placed Burgess on lifetime probation.

¶3 In November 2017, the state filed a petition to revoke Burgess's probation, alleging numerous violations of his probation terms. After a contested hearing, the trial court found Burgess had violated his probation terms by having physical contact with a minor child, frequenting a residence and social functions where minors were expected to be present, and consuming alcohol. The court revoked Burgess's probation and imposed a maximum, fifteen-year prison term. It found as aggravating factors that the conduct leading to his convictions was not isolated, emotional harm to the victim and her family, and that he had abused a position of trust in an attempt to compel the victim to recant. The court further found as aggravating Burgess's failure to benefit from lenient treatment by adhering to probation.

¶4 On appeal, Burgess asserts the trial court gave too much weight to "the nature of [his] violations," pointing to the court's comment that his behavior "did not constitute grooming" and the lack of evidence that he had been alone with any of the minor children.[1] He also asserts that

[1]Burgess takes the trial court's comment about "grooming" out of context. In discussing Burgess's conduct, which included having a minor

his violations "are not indicative of a pattern of behavior which could lead to new criminal conduct." Finally, he asserts that the court relied on other factors that "should have been accorded little weight" because they "were remote in time."

¶5 The weight that an aggravating or mitigating circumstance has on sentencing is generally left to the discretion of the trial court. *See State v. Harvey*, 193 Ariz. 472, ¶ 24 (App. 1998). Further, to justify the imposition of a maximum sentence, the court need only rely on one aggravating circumstance. A.R.S. § 13-701(C); *see also* A.R.S. § 13-705(J). The circumstance, or circumstances, that the court relies on to impose a maximum sentence within the statutory limits only needs to be sufficient and appropriate—thus, "[w]here a sentence is within the permissible statutory limits, it will not be modified or reduced on appeal unless it clearly appears excessive under the circumstances." *State v. Gillies*, 142 Ariz. 564, 573 (1984) (quoting *State v. Pickard*, 105 Ariz. 219, 221 (1970)).

¶6 Burgess has cited no authority suggesting that a trial court must discount aggravating factors related to the offense merely because they are remote in time. *See* Ariz. R. Crim. P. 31.10(a)(7) (appellant's opening brief must include argument with citations of legal authorities); *State v. Bolton*, 182 Ariz. 290, 298 (1995) (failure to develop argument on appeal waives claim). Nor has he identified any factual error in the court's sentencing decision. *Cf. Platt v. Platt*, 17 Ariz. App. 458, 459 (1972) ("For an abuse of discretion to exist, the record must be devoid of competent evidence to support the decision."). In sum, he has not shown the court abused its discretion in imposing the maximum prison term.

¶7 We affirm the sentence imposed.

"walk on [his] back to try to pop it," the court noted, "Your behavior wasn't grooming. Grooming starts off as ordinary behavior and I don't know if it was innocent or if it was the beginning of a process."