

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

DEC -9 2010

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

THE STATE OF ARIZONA,	)	2 CA-CR 2010-0074
	)	DEPARTMENT A
Appellee,	)	<u>MEMORANDUM DECISION</u>
v.	)	Not for Publication
	)	Rule 111, Rules of
FRANCISCO JAVIER COCOBA,	)	the Supreme Court
	)	
Appellant.	)	
	)	

APPEAL FROM THE SUPERIOR COURT OF COCHISE COUNTY

Cause No. CR200800265

Honorable Donna M. Beumler, Judge Pro Tempore

AFFIRMED

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Joel Larson, Cochise County Legal Defender  
By Bethany Graham

Bisbee  
Attorneys for Appellant

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E S P I N O S A, Judge.

¶1 After a two-day jury trial, appellant Francisco Cocoba was convicted of possession of a narcotic drug, a class four felony, and unlawful possession of drug paraphernalia, a class six felony. The trial court suspended the imposition of sentence and placed Cocoba on probation for one year. 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 thoroughly and has found no arguable issues to raise on appeal. She has asked us to search the record for fundamental error. Cocoba has filed a supplemental brief, claiming he “disagree[s] with [his] case.” For the reasons set forth below, we affirm.

¶2 Viewed in the light most favorable to sustaining the verdicts, the evidence was sufficient to prove each of the jury’s findings of guilt. See *State v. Tamplin*, 195 Ariz. 246, ¶ 2, 986 P.2d 914, 914 (App. 1999). And, the term of probation is authorized by law. In November 2007, Cochise County sheriff’s deputy Arthur Estrada stopped Cocoba for speeding. Upon searching Cocoba incident to an outstanding arrest warrant, Estrada found a paper bundle containing a substance later identified as cocaine in Cocoba’s pants pocket. Although Cocoba attended the first day of his November 2008 trial, he did not appear for the second day of trial.<sup>1</sup> Defense counsel moved for a continuance, asserting that Cocoba had not waived his presence and was at the doctor’s office because he was ill. The court said it would consider counsel’s motion if the doctor verified, within twenty minutes, that Cocoba was “severely ill.” No verification arrived,

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<sup>1</sup>Cocoba also failed to appear for his pretrial conference, his presentence interview, and the first date set for sentencing.

and the court denied the request for a continuance and proceeded with the trial in Cocoba's absence. Before setting final jury instructions, the court again asked defense counsel if he had received any documentation that Cocoba was too ill to appear; counsel responded he had not, and the court affirmed its ruling denying the motion to continue. The court granted defense counsel's motion precluding any mention of Cocoba's absence and instructed the jury not to speculate about that fact. Cocoba was arrested pursuant to a warrant approximately one year later and was sentenced in February 2010.

¶3 We briefly address the claims Cocoba raises in his supplemental brief, none of which has merit. He first claims he was not present for sentencing. The record belies this fact; Cocoba was present at sentencing in February 2010, pursuant to an arrest warrant. Second, Cocoba claims he did not have the opportunity to testify at trial. We review a trial court's ruling that a defendant was voluntarily absent from trial for an abuse of discretion. *See State v. Muniz-Caudillo*, 185 Ariz. 261, 262, 914 P.2d 1353, 1354 (App. 1996). There is absolutely no evidence in the record before us that the court abused its discretion by proceeding in Cocoba's absence. Not only did Cocoba sign a document acknowledging the trial would proceed in his absence if he failed to appear, but a defense investigator informed the court on the second day of trial that he had advised Cocoba that same morning that "we need[] a doctor's note." Thus, Cocoba was responsible for any lost opportunity to testify at trial. Finally, Cocoba claims he "was not able to listen to Officer Estrada's allegations." The record, however, shows Cocoba was present on the first day of trial, when Estrada testified.

¶4 Pursuant to our obligation under *Anders*, we have searched the record for fundamental, reversible error and have found none. Cocoba's convictions and the probationary term imposed are affirmed.

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

CONCURRING:

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

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