

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

MAY 14 2013

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

THE STATE OF ARIZONA,	)	2 CA-CR 2012-0336
	)	DEPARTMENT A
Appellee,	)	
	)	<u>MEMORANDUM DECISION</u>
v.	)	Not for Publication
	)	Rule 111, Rules of
KAREN RENE LAKATOS,	)	the Supreme Court
	)	
Appellant.	)	
_____	)	

APPEAL FROM THE SUPERIOR COURT OF COCHISE COUNTY

Cause No. CR201100152

Honorable Wallace R. Hoggatt, Judge

AFFIRMED

Emily Danies

Tucson  
Attorney for Appellant

MILLER, Judge.

¶1 Appellant Karen Lakatos was convicted pursuant to a plea agreement of one count of possession of marijuana and was placed on probation for three years. After a contested revocation hearing, the trial court revoked probation and sentenced Lakatos to the presumptive prison term of one year, to be served concurrently with the one-year prison term imposed in another case (CR201100153) after the court simultaneously

revoked probation in that case as well. On appeal, 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), avowing she has found “[n]o arguable question of law” and requesting that this court review the record for fundamental error. Lakatos has not filed a supplemental brief.

¶2 Viewed in the light most favorable to sustaining the trial court’s rulings, *see State v. Vaughn*, 217 Ariz. 518, 519, n.2, 176 P.3d 716, 717 n.2 (App. 2008), the record contains no error that can be characterized as fundamental and prejudicial. The record supports the court’s determination that the state sustained its burden of proving by a preponderance of the evidence Lakatos violated probation as asserted in three out of the five allegations in the December 2011 petition to revoke probation. *See* Ariz. R. Crim. P. 27.8(b)(3) (probation violation must be proved by preponderance of evidence). Specifically, the evidence supports the court’s finding that Lakatos had failed to submit to alcohol and drug testing on November 16, 18 and 30, 2011, as alleged in counts two, four and five of the petition to revoke.

¶3 Nor have we discovered any error, much less fundamental, prejudicial error with respect to the court’s decision to revoke Lakatos’s probation and sentence her to prison. *State v. Stotts*, 144 Ariz. 72, 79, 695 P.2d 1110, 1117 (1985) (trial court has broad discretion in deciding whether to revoke probation and sentence defendant to prison term).<sup>1</sup> In addition, the presumptive, one-year prison term was within the statutory range and was, therefore, lawful; it was also imposed in a lawful manner. *State v.*

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<sup>1</sup>The original presentence report prepared in connection with Lakatos’s entry of the guilty plea stated, “the instant offense is the defendant’s fifth personal-rule drug-related conviction and is subject to the provisions of A.R.S. § 13-901.01(H),” rendering incarceration an option.

*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 imposed in unlawful manner when court sentences defendant without material information); *State v. House*, 169 Ariz. 572, 573, 821 P.2d 233, 234 (App. 1991) (sentence outside applicable range illegal).<sup>2</sup>

¶4 We have reviewed the entire record as requested and have found no error that can be characterized as fundamental and prejudicial. *See State v. Henderson*, 210 Ariz. 561, ¶¶ 19, 26, 115 P.3d 601, 607, 608-09 (2005). Therefore, we affirm the trial court’s orders finding Lakatos violated probation, revoking probation, and imposing a one-year prison term.

/s/ Michael Miller

MICHAEL MILLER, Judge

CONCURRING:

/s/ Joseph W. Howard

JOSEPH W. HOWARD, Chief Judge

/s/ Peter J. Eckerstrom

PETER J. ECKERSTROM, Presiding Judge

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<sup>2</sup>Any error that might have occurred with respect to the length of the one-year prison term appears to be moot, given that Lakatos apparently has completed her sentence. *See State v. Peters*, 110 Ariz. 316, 317, 518 P.2d 566, 567 (1974) (issue relating to legality of jail sentence rendered moot by passage of time).