

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  
MAR 27 2013  
COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

THE STATE OF ARIZONA,	)	2 CA-CR 2012-0337
	)	DEPARTMENT B
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v.	)	Not for Publication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. CR201100153

Honorable Wallace R. Hoggatt, Judge

AFFIRMED

Emily Danies

Tucson  
Attorney for Appellant

ESPINOSA, Judge.

¶1 Appellant Karen Lakatos has appealed from the trial court’s revocation of her probation and imposition of a one-year prison term. 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 no arguable issue to raise on appeal

and requesting that this court review the record for fundamental error. Lakatos has not filed a supplemental brief.

¶2 Pursuant to a plea agreement, Lakatos was convicted of possession of marijuana, a class six felony.<sup>1</sup> The trial court suspended the imposition of sentence and placed her on probation for three years, commencing in April 2011, to be served concurrently with a probationary term imposed in another cause number, CR201100152. In December 2011, the state filed a petition to revoke probation. After a violation hearing, which included a petition to revoke probation in CR201100152, the court found Lakatos had violated the conditions of probation as alleged in counts two, four, and five of the petition by failing to submit to drug and alcohol testing on three separate occasions. The court revoked probation and sentenced Lakatos to concurrent, presumptive prison terms of one year in both causes.

¶3 Error is fundamental when it affects the foundation of the case, deprives the defendant of a right essential to her defense, or is “of such magnitude that the defendant could not possibly have received a fair trial,” or, in this case a fair revocation hearing. *State v. Henderson*, 210 Ariz. 561, ¶ 19, 115 P.3d 601, 607 (2005); *accord State v. Gendron*, 168 Ariz. 153, 155, 812 P.2d 626, 628 (1991). The record before us, viewed in the light most favorable to sustaining the trial court’s ruling, *see State v. Vaughn*, 217 Ariz. 518, n.2, 176 P.3d 716, 717 n.2 (App. 2008), contains no such error. Rather, the record supports the court’s determination that the state sustained its burden of proving

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<sup>1</sup>According to the presentence report this was Lakatos’s “sixth personal-use drug-related conviction.”

three of the five counts in the petition to revoke probation by a preponderance of the evidence. *See* Ariz. R. Crim. P. 27.8(b)(3) (probation violation must be proved by preponderance of evidence); *State v. Tulipane*, 122 Ariz. 557, 558, 596 P.2d 695, 696 (1979) (same). Specifically, the evidence established Lakatos had failed to submit to alcohol and drug testing on November 16, 18, and 30, 2011, as alleged in three counts of the petition to revoke. Thus, the record supports the court's finding regarding the violation of probationary conditions, and it also shows the revocation proceeding was conducted in accordance with the law.

¶4 In addition, we see no error with respect to sentencing, much less error that resulted in an unlawful or unlawfully imposed sentence and could, therefore, be characterized as fundamental. *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. House*, 169 Ariz. 572, 573, 821 P.2d 233, 234 (App. 1991) (sentence outside applicable statutory range illegal).<sup>2</sup> The presumptive prison term the court imposed was authorized by law and imposed in a lawful manner.

¶5 We see no error, much less error that can be characterized as fundamental and prejudicial. *See Henderson*, 210 Ariz. 561, ¶¶ 19, 26, 115 P.3d at 607, 608-09.

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<sup>2</sup>Moreover, any sentencing error related to the length of the prison term imposed 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).

Accordingly, the trial court's orders finding Lakatos violated probation, revoking probation, and imposing a one-year prison term are affirmed.

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

CONCURRING:

/s/ Garye L. Vásquez  
GARYE L. VÁSQUEZ, Presiding Judge

/s/ Michael Miller  
MICHAEL MILLER, Judge