

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

SHARON MARSHA SIMPKINS,
Appellant.

No. 2 CA-CR 2013-0364
Filed April 4, 2014

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NOT FOR PUBLICATION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); Ariz. R. Crim. P. 31.24.

Appeal from the Superior Court in Pima County
No. CR20061402
The Honorable Catherine Woods, Judge

APPEAL DISMISSED

COUNSEL

Ronald Zack, PLC, Tucson
By Ronald Zack
Counsel for Appellant

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MEMORANDUM DECISION

Judge Miller authored the decision of the Court, in which Chief Judge Howard and Judge Brammer¹ concurred.

M I L L E R, Judge:

¶1 Sharon Simpkins appeals from the trial court’s denial of her pro se, post-sentence motion for a hardship fee waiver. Counsel 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 he reviewed the record but found “[n]o arguable question of law” to raise on appeal. Consistent with *Clark*, 196 Ariz. 530, ¶ 32, 2 P.3d at 97, he provided “a detailed factual and procedural history of the case with citations to the record” and asks this court to search the record for fundamental error. Simpkins did not file a supplemental brief.

¶2 Although counsel suggests we have jurisdiction pursuant A.R.S. § 13-4033(A), “[t]his court has an independent duty to examine whether we have jurisdiction over matters on appeal.” *Ghadimi v. Soraya*, 230 Ariz. 621, ¶ 7, 285 P.3d 969, 970 (App. 2012). For the following reasons, we conclude we are without jurisdiction to consider this appeal and, accordingly, we dismiss it.

Background

¶3 In 2006, Simpkins was convicted—pursuant to a plea agreement—of possession of a narcotic drug. The trial court suspended imposition of sentence and placed her on a three-year term of probation; it also ordered her to pay a fine of \$2,000 and various fees and assessments, but it waived a \$1,600 surcharge.

¹The Hon. J. William Brammer, Jr., a retired judge of this court, is called back to active duty and is assigned to serve on this case pursuant to orders of this court and the supreme court.

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¶4 Simpkins was twice adjudicated as having violated conditions of her probation; on both occasions, the judgments were based on her admissions. As its disposition for the second violation, the trial court revoked Simpkins's probation, sentenced her to a two-year prison term, and ordered "all fines, fees and assessments previously imposed" reduced to a criminal restitution order. In May 2011, after Simpkins's discharge from prison, the court granted her pro se application for restoration of her civil rights, except for the right to possess firearms, and set aside her judgment of guilt. *See* A.R.S. § 13-907.

¶5 In June 2013, Simpkins filed a pro se, post-sentence motion for a hardship fee waiver, apparently seeking reduction of the fine and fees imposed at sentencing. The trial court denied the motion, finding Simpkins had "failed to set forth a sufficient factual or legal basis for the relief she requests." This appeal followed.

Discussion

¶6 Pursuant to § 13-4033(A), a criminal defendant may appeal "only from" the following:

1. A final judgment of conviction or verdict of guilty except insane.
2. An order denying a motion for a new trial.
3. An order made after judgment affecting the substantial rights of the party.
4. A sentence on the grounds that it is illegal or excessive.

The availability of appeal is further limited by § 13-4033(B), which provides: "In noncapital cases a defendant may not appeal from a judgment or sentence that is entered pursuant to a plea agreement or an admission to a probation violation."

¶7 In *State v. Jimenez*, we determined § 13-4033(B) precluded a pleading defendant from appealing the denial of his motion to modify the

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conditions of his probation. 188 Ariz. 342, 345, 935 P.2d 920, 923 (App. 1996). We explained the trial court's denial of relief was not "[a]n order made after judgment affecting the substantial rights of the party" under § 13-4033(A)(3),² because the order did not "change[] or modif[y] the judgment or sentence originally imposed" which, pursuant to § 13-4033(B), was not subject to appeal. *Jimenez*, 188 Ariz. at 344-45, 935 P.2d at 922-23. Instead, a pleading defendant "must seek review of his [or her] change of plea and sentencing proceedings by way of Rule 32, Ariz. R. Crim. P.," and cannot circumvent the preclusive effect of § 13-4033(B) "by simply filing a 'motion to modify' conditions of probation which were imposed at the time of sentencing." *Jimenez*, 188 Ariz. at 343, 935 P.2d at 921; *see also State v. Baca*, 187 Ariz. 61, 66, 926 P.2d 528, 533 (App. 1996) (§ 13-4033(B) precludes direct appeal of denial of motion to modify sentence imposed pursuant to probation violation agreement); *cf. Hoffman v. Chandler*, 231 Ariz. 362, ¶ 19, 295 P.3d 939, 943 (2013) (holding "§ 13-4033(B) bars a defendant from directly appealing a contested post-judgment restitution order entered pursuant to a plea agreement that contemplated payment of restitution and capped the amount").

¶8 The same analysis applies here. Simpkins may not appeal from the trial court's order denying her motion for a hardship fee waiver, which challenges the sentence originally imposed pursuant to a plea of guilty and reaffirmed after Simpkins's admissions to probation violations.

Disposition

¶9 We lack jurisdiction to consider this appeal. *See In re Marriage of Johnson & Gravino*, 231 Ariz. 228, ¶ 5, 293 P.3d 504, 506 (App. 2012) (jurisdiction of court of appeals "is prescribed by statute; we have no authority to entertain an appeal over which we do not have jurisdiction"). Accordingly, Simpkins's appeal is dismissed.

²In *Jimenez*, we referred to § 13-4033(A)(2), which provided an appeal could be taken from "an order made after judgment affecting the substantial rights of the party" when *Jimenez* was decided. *Jimenez*, 188 Ariz. at 344, 935 P.2d at 922; 1993 Ariz. Sess. Laws, ch. 256, § 6. This same language is now found in § 13-4033(A)(3). *See* 2008 Ariz. Sess. Laws, ch. 25, § 1.