

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

JORDAN ROBERT HENDRIX,
Appellant.

No. 2 CA-CR 2014-0203
Filed March 23, 2015

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NOT FOR PUBLICATION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. 31.24.

Appeal from the Superior Court in Gila County
No. S0400CR201300048
The Honorable Robert Duber II, Judge

AFFIRMED

COUNSEL

Mark Brnovich, Arizona Attorney General
Joseph T. Maziarz, Section Chief Counsel, Phoenix
By Amy Pignatella Cain, Assistant Attorney General, Tucson
Counsel for Appellee

Emily Danies, Tucson
Counsel for Appellant

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MEMORANDUM DECISION

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

ECKERSTROM, Chief Judge:

¶1 Jordan Hendrix appeals from the trial court's determination that he violated the conditions of his probation, and the resulting disposition. He argues that insufficient evidence supports the court's finding that he had failed and refused to participate in counseling or treatment as required by the terms of his probation. We affirm.

¶2 Hendrix pled guilty to possession of a narcotic drug. The trial court suspended the imposition of sentence and placed Hendrix on a twelve-month term of probation, commencing August 9, 2013. Term six of Hendrix's probation required him to "comply with any written directive" of the probation department "to enforce compliance with the conditions of probation"; term eleven required him to "actively participate and cooperate in any program of counseling or assistance as determined by" the probation department. After Hendrix was placed on probation, the probation office directed him to attend drug treatment. Although he initially began treatment, he was discharged for failure to attend and failure to participate in a drug test.

¶3 In March 2014, Hendrix's probation officer filed a petition to revoke probation, alleging Hendrix had violated terms six and eleven because he "is not actively participating and cooperating in counseling." After a violation hearing, the trial court found Hendrix had violated the terms of his probation because he had "failed and refused to participate in counseling or treatment." The court then reinstated Hendrix on probation, extending that probation for twenty-four months from the disposition date. The

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court also ordered that Hendrix be incarcerated in the county jail for 365 days. This appeal followed.

¶4 On appeal, Hendrix argues the evidence did not support the trial court's finding that he had violated his probation terms. The state must prove a probation violation by a preponderance of the evidence. Ariz. R. Crim. P. 27.8(b)(3). We view the evidence in the light most favorable to upholding the trial court's ruling. *State v. Ellison*, 213 Ariz. 116, ¶ 25, 140 P.3d 899, 909 (2006). And we will affirm a "finding that a probationer has violated probation unless the finding is arbitrary or unsupported by any theory of evidence." *State v. Vaughn*, 217 Ariz. 518, ¶ 14, 176 P.3d 716, 719 (App. 2008), quoting *State v. Thomas*, 196 Ariz. 312, ¶ 3, 996 P.2d 113, 114 (1999).

¶5 In support of his argument, Hendrix first notes the petition to revoke stated, in the present tense, that he "is not actively participating and cooperating in counseling" and that, at the time of the hearing, he was "enrolled and actively participating in a program." As we understand his claim, he reasons that he could not have been found to have violated the terms of his probation based on the allegations in the petition because he was not in violation at the time of the hearing. But Hendrix does not cite any authority suggesting that, merely because an allegation is stated in the present tense, the state is required to demonstrate that the defendant is in violation of his or her probation at the immediate time of the violation hearing. See Ariz. R. Crim. P. 31.13(c)(1)(vi) (brief must include citation to authority). Nor does he suggest he was in compliance with the terms of his probation at the time the petition was filed, and the record clearly demonstrates otherwise. Accordingly, we do not address this argument further. See *State v. Bolton*, 182 Ariz. 290, 298, 896 P.2d 830, 838 (1995) (failure to develop legal argument waives argument on review).

¶6 Hendrix also argues the trial court erred in concluding he had "refused" to participate in a treatment program. In support of this argument, he cites cases addressing probation ineligibility pursuant to A.R.S. § 13-901.01(G). See, e.g., *State v. Shively*, 234 Ariz. 560, 323 P.3d 1211 (App. 2014); *State v. Vaughn*, 217 Ariz. 518, 176

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P.3d 716 (App. 2008). Pursuant to § 13-901.01(G), the probation department may file a petition to revoke the probation of any defendant who “fails or refuses to participate in drug treatment.” That subsection additionally provides that, “[i]f the court finds that the defendant refused to participate in drug treatment, the defendant shall no longer be eligible for probation.” *Id.* But the court here, despite finding Hendrix had refused to participate in drug treatment, did not apply § 13-901.01(G) and instead reinstated him on probation. Thus, even assuming Hendrix is correct that he did not refuse to participate in treatment, any error was harmless. *See State v. Henderson*, 210 Ariz. 561, ¶ 18, 115 P.3d 601, 607 (2005) (error harmless if it did not “contribute to or affect the verdict or sentence”).

¶7 We affirm the trial court’s finding that Hendrix violated the terms of his probation and the court’s disposition.