

PROBATION: Ariz. R. Crim. P. Rule 27 — *State v. Hensley*: A.R.S. § 13-901.01(E): When a Proposition 200 defendant violates his probation, the trial court may not terminate the defendant’s probation as “unsuccessfully terminated,” but rather must reinstate the defendant on probation with additional termsRevised 3/2010

The trial court has no authority to terminate a period of probation as unsuccessfully completed. *State v. Findler*, 152 Ariz. 385, 386, 732 P.2d 1123, 1124 (App. 1987). In *State v. Hensley*, 201 Ariz. 74, 31 P.3d 848 (App. 2001), the Court of Appeals held that A.R.S. § 13-901.01(E) requires a trial court to impose additional conditions of probation on a person who violates the terms of his Proposition 200 probation. In *Hensley*, the defendant had two prior convictions for armed robbery, but the State had not alleged or proven those prior convictions before the defendant pleaded no contest to possession of dangerous drugs and drug paraphernalia. The presentence report noted the prior violent-nature convictions and recommended prison, but the trial court imposed probation. Relying on *Bolton v. Superior Court*, 190 Ariz. 201, 945 P.2d 1332 (App. 1997), the State appealed, arguing that A.R.S. § 13-901.01(B) says that a defendant with a violent prior conviction “is not eligible for probation as provided for in this section.” The Court of Appeals disagreed, following *State v. Benak*, 199 Ariz. 333, 18 P.3d 127 (App. 2001).

The *Hensley* court further held that A.R.S. § 13-901.01(E) requires the trial court to impose new conditions of probation on defendants who violate their Proposition 200 probation. The court noted that no statute allows the court to unsuccessfully terminate a defendant’s probation and held, “The plain language of A.R.S. § 13-901.01(E) states that the court ‘shall’ impose additional conditions on one who violates the terms of probation. The word ‘shall’ is a mandatory term.” *Hensley*, 201 Ariz. at 80 ¶ 22, 31 P.3d at 854. The *Hensley* court concluded:

We appreciate the obstacles faced by the trial court in dealing with persons who repeatedly violate probation in Proposition 200 cases. However, as set forth in A.R.S. § 13-901.01(E), the solution to this problem cannot be to reward a violator by releasing him from probation. Instead, the court should employ all legally available means to penalize an offending probationer.

Id. at ¶ 23, 31 P.3d at 854.