

MATTHEW MICHAEL
RAMSEY,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

CASE NO. 1D08-4263

Opinion filed June 24, 2009.

An appeal from the Circuit Court for Escambia County.
Jan Shackelford, Judge.

Nancy A. Daniels, Public Defender, and Archie F. Gardner, Jr., Assistant Public
Defender, Tallahassee, for Appellant.

Bill McCollum, Attorney General, and Giselle Denise Lyles, Assistant Attorney
General, Tallahassee, for Appellee.

PER CURIAM.

The appellant is serving probation for animal cruelty. A condition of probation is that he pay fines and fees totaling over \$5,000. Over the course of his probation, the appellant has paid only a single payment of \$300. He is here seeking review of an order finding him in violation of his probation for failing to

make monthly payments. He argues that the trial court failed to establish he had the ability to pay the fines and fees required by his probation.

The appellant has an eighth-grade education and no G.E.D. He drives a logging truck, earning approximately \$1200 each month. All of his income supports the needs of appellant and his two children.

The State must prove appellant had the ability to pay and that he willfully violated his probation. See Smith v. State, 892 So. 2d 513 (Fla. 1st DCA 2004); see also Davis v. State, 704 So. 2d 681 (Fla. 1st DCA 1997). The trial court found that appellant somehow could have found a way to make the payments, but those findings are speculative. There is no record evidence upon which the trial court could have found that appellant had the ability to make his monthly payments or that he willfully violated his probation.

REVERSED.

WOLF, KAHN, and VAN NORTWICK, JJ., CONCUR.