

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING  
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL  
OF FLORIDA  
SECOND DISTRICT

DONALD FREDERICK ROYAL, )  
 )  
 Appellant, )  
 )  
 v. )  
 )  
 STATE OF FLORIDA, )  
 )  
 Appellee. )  
 \_\_\_\_\_ )

Case No. 2D07-5462

Opinion filed December 12, 2008.

Appeal from the Circuit Court for Pasco  
County; Pat Siracusa, Judge.

James Marion Moorman, Public Defender,  
and Judith Ellis, Assistant Public Defender,  
Bartow, for Appellant.

Bill McCollum, Attorney General,  
Tallahassee, and Anne Sheer Weiner,  
Assistant Attorney General, Tampa, for  
Appellee.

STRINGER, Judge.

Donald Frederick Royal seeks review of the trial court's order revoking his probation and his resulting judgment and sentence. The court revoked Royal's probation based on its findings that Royal willfully and substantially violated conditions four and eight of his probation. We affirm the finding that Royal violated condition eight

by committing the new law violation of driving with a suspended license, and we decline to comment further on the issue. We reverse the finding that Royal violated condition four of his probation by leaving his county of residence without permission because the State did not present evidence to refute Royal's testimony that he did have permission to leave the county. See Hicks v. State, 890 So. 2d 459, 462 (Fla. 2d DCA 2004) (holding that defendant did not willfully violate his probation by operating a kiosk in a mall because his probation officer gave him tacit permission to do so); McCarty v. State, 978 So. 2d 249, 249 (Fla. 5th DCA 2008) (holding that defendant's discharge from one branch of a drug treatment program was not a willful violation of probation because his probation officer had authorized the defendant to report to another branch). Because we are unable to determine whether the trial court would have revoked Royal's probation based solely on the evidence of the new law violation, we reverse and remand for reconsideration. See Gary v. State, 987 So. 2d 180, 182 (Fla. 2d DCA 2008).

Affirmed in part, reversed in part, and remanded.

FULMER and VILLANTI, JJ., Concur.