

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

IN THE DISTRICT COURT OF APPEAL  
OF FLORIDA  
SECOND DISTRICT

STEVEN STUART, )  
 )  
 Appellant, )  
 )  
 v. )  
 )  
 STATE OF FLORIDA, )  
 )  
 Appellee. )  
 \_\_\_\_\_ )

Case No. 2D08-1462

Opinion filed September 3, 2008.

Appeal pursuant to Fla. R. App. P.  
9.141(b)(2) from the Circuit Court for  
Polk County; J. Dale Durrance, Judge.

Steven Stuart, pro se.

Bill McCollum, Attorney General,  
Tallahassee, and Sara Macks, Assistant  
Attorney General, Tampa, for Appellee.

ALTENBERND, Judge.

Steven Stuart appeals the denial of his motion for modification of proba-  
tion; we treat this appeal as a petition for writ of certiorari and grant the petition. See  
Wesner v. State, 843 So. 2d 1039 (Fla. 2d DCA 2003).

Mr. Stuart is currently on probation for sexual offenses that occurred in 1994. His conditions of probation prevent him from having any contact with children. The victim of his earlier offenses was a daughter, who is now an adult. At the daughter's request, the trial court previously entered an order allowing Mr. Stuart to have unsupervised contact with her.

Mr. Stuart also has a son who was born shortly after the offense. He has never been allowed contact with his son, even though he maintains a relationship with his wife. He has previously attempted without success to modify his conditions of probation to allow some contact with his son.

On this occasion, Mr. Stuart filed a motion to modify his conditions of probation in January 2008. It reflects that he is now in the after-care phase of a sexual offender treatment program and that he has been having contact with his daughter for four months. It attaches letters supporting the modification from his son, his daughter, (the victim), his wife, an aunt who is willing to serve as the person providing supervision, and a grandmother who at least would like to have sufficient contact within the family for a family photograph and an occasional family dinner. The record contains a letter from a Department of Corrections' probation specialist recognizing that the aunt has obtained "nonoffending parent" training to assist with supervised visitation.

It is undisputed that when this motion was filed, the trial court had a judicial assistant contact the State Attorney's Office to determine whether that office objected to a modification. Upon learning that the State objected to the modification, the trial court denied the motion without a hearing.

We conclude that the trial court departed from the essential requirements of the law in disposing of this motion in this summary fashion. The order is quashed. On remand, the trial court shall hold an evidentiary hearing on the motion to allow Mr. Stuart to present his evidence justifying a modification.

Petition for writ of certiorari granted; order denying modification of probation quashed.

CASANUEVA and STRINGER, JJ., Concur.