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

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

SECOND DISTRICT

JOHNNY BERNARD JACKSON,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

Case No. 2D10-1985

Opinion filed February 25, 2011.

Appeal from the Circuit Court for
Hillsborough County; Daniel L. Perry, Judge.

James Marion Moorman, Public Defender,
and Whilden S. Parker, Special Assistant
Public Defender, Bartow, for Appellant.

Pamela Jo Bondi, Attorney General,
Tallahassee, and Dawn A. Tiffin, Assistant
Attorney General, Tampa, for Appellee.

MORRIS, Judge.

Johnny Bernard Jackson appeals the revocation of his probation and the resulting sentences for numerous counts of robbery, armed robbery, and attempted robbery. We affirm the revocation of his probation without further comment. We write

only to address a scrivener's error as well as the practice of issuing new judgment forms upon revocation of probation.

Jackson argues that remand is required for an amended revocation order clarifying exactly what lower tribunal cases were subject to revocation. Although Jackson has presented more than one argument on this issue, we find that remand is required only for the trial court to add lower tribunal case number 95-94 to the order of revocation. It is clear from the record before this court that case number 95-94 was subject to the trial court's order of revocation and was only omitted due to a scrivener's error, which is not surprising considering the number of lower tribunal cases involved. Accordingly we remand solely for this correction.

We do take this opportunity, however, to address an issue which was discussed in this court's opinion in Dawkins v. State, 936 So. 2d 710, 712 (Fla. 2d DCA 2006). Upon revocation, the trial court in this case issued new judgment forms which were signed fifteen years after the original judgments. In Dawkins, we noted that this appears to be a procedure utilized in the Thirteenth Judicial Circuit every time a sentence is imposed upon revocation of probation. Id. at 711. We noted in Dawkins that we were "not aware of any rule or statute that expressly permits a circuit court to enter multiple judgments of conviction for the same offense in one case." Id. at 712.

While we have a revocation order in this case and therefore do not have the same jurisdictional problem that arose in Dawkins, we stress that the entry of a new judgment form is superfluous and could cause undue confusion. For example, with the public record containing duplicative judgment forms entered fifteen years after the original judgments, it could be difficult to determine exactly how many offenses the

defendant had committed. There is also a question as to whether the two-year period for filing a motion for postconviction relief begins anew. These concerns were fleshed out in Dawkins, but because this issue has been presented to us again, we emphasize that such duplicative judgment forms are unnecessary and should be avoided.

Affirmed and remanded with instructions.

NORTHCUTT, J., Concurs.
ALTENBERND, J., Concurs with opinion.

ALTENBERND, Judge, Concurring.

I fully concur in this opinion. I write only to observe that unintentionally the Department of Corrections is contributing to the problems caused by duplicative judgments in criminal cases. The confusion arises from the uniform commitment form that the Department designed and supplies to the circuit courts. See § 944.17(4), Fla. Stat. (2010). The standard form is confusing and makes no reference to an order of revocation of probation or community control. A reference to an order of revocation would be helpful because the Department probably needs to obtain a certified copy of such an order when it takes custody of a defendant who is serving a split sentence and who returns to prison as a result of a violation of probation or community control.

The standard form, which gives the sheriff the authority to transfer a prisoner from county jail to the Department, explains that the defendant has been "duly convicted" "as appears from the attached certified copies of indictment or information

filed, judgement [sic] and sentence, and felony disposition and sentence data from which are hereby made parts hereof." I would note that, at least in the Second District, some clerks spell "judgment" correctly and others spell it "judgement." I am also not certain whether the Department's form is referring to a "felony disposition and sentence data form[,] which" is made part of the commitment package, or to "felony disposition and sentence data from which" is made part of the package; we receive both versions of the uniform commitment form from clerks within this circuit.[1]

Typographical issues aside, some circuit courts have read the standard uniform commitment form as requiring them to enter duplicative judgments when imposing a sentence on a violation of probation. In actuality, the circuit court must enter a judgment on a violation of probation "unless [the defendant] has previously been adjudged guilty." See § 948.06(2)(e), Fla. Stat. (2010) (emphasis added). Thus, the circuit court only enters a judgment on a violation of probation in those instances when it withheld an adjudication of guilt, i.e., withheld judgment, at the time it originally imposed probation.

Section 948.06 does not expressly state that an order of revocation of probation or community control is the order otherwise entered in this context, but such an order is implied by that statute. The legislature has expressly identified the order revoking probation as the appealable order. See § 924.06(1)(c), Fla. Stat. (2010). The supreme court has created a form order for use on revocation of probation and community control. See Fla. R. Crim. P. 3.995. I assume the Department has adopted

[1]Although this form is apparently designed and supplied by the Department, I have found no administrative regulations that address the uniform commitment form and do not know when the Department last revised the form.

the uniform order on revocation of probation and community control as the law requires. See § 944.17(4).

Although this case is not an example, this court continues to receive many appeals from defendants whom the circuit courts have sentenced and transferred to the Department without the necessary order of revocation of probation. Instead of the order of revocation, this court receives duplicative judgments. These duplicative judgments are, at best, confusing and unnecessary. Hopefully, they are harmless in most contexts. While such a duplicative judgment is unnecessary and usually harmless, the absence of the order of revocation of probation is not. That order is the predicate order empowering the circuit court to enter a new sentence without violating double jeopardy. Accordingly, this court regularly relinquishes jurisdiction to the circuit court, requiring the circuit court to enter this essential order.

If the uniform order of commitment, or the regulations accompanying that form, explained the need for the Department to receive an order of revocation of probation or community control and not a duplicative judgment when taking custody of a prisoner in this context, this problem could be quickly eliminated.