

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

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

SASHA ALEXANDRA BROCKHAUS,

Appellant,

v.

Case No. 5D19-2918

STATE OF FLORIDA,

Appellee.

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Opinion filed July 17, 2020

Appeal from the Circuit Court
for Volusia County,
Sandra C. Upchurch, Judge.

James S. Purdy, Public Defender, and Edward J.
Weiss, Assistant Public Defender, Daytona
Beach, for Appellant.

Ashley Moody, Attorney General, Tallahassee,
and Douglas T. Squire, Assistant Attorney
General, Daytona Beach, for Appellee.

HARRIS, J.

Sasha Alexandra Brockhaus appeals the trial court's order revoking her probation, arguing that the court erred in finding that she violated probation based on acts not charged in the affidavit and that the State failed to prove that she willfully violated a substantial condition of her probation. We agree that the order revoking probation is not supported by competent, substantial evidence, and therefore we reverse.

On January 3, 2019, Brockhaus was placed on two years' drug offender probation. Less than six months later, she pled no contest to her first violation of probation charge and was placed on thirty-six months' probation with a special condition that she successfully complete drug court. Shortly thereafter, a subsequent violation of probation violation affidavit was filed alleging that Brockhaus violated "Special Condition (30)" of her probation by failing to successfully complete the drug court program. The violation report indicated that Brockhaus was unsuccessfully discharged from drug court due to a positive drug test and repeated rule violations.

At a hearing on the violation of probation, the court asked Brockhaus whether she had a positive drug test while in the drug court program. In response, Brockhaus acknowledged only that she tested positive for methamphetamines. The court then found that Brockhaus freely and voluntarily admitted to violating probation and sentenced her to twenty-four months in prison.

We find that the trial court abused its discretion in revoking Brockhaus' probation. The violation of probation affidavit alleged, and the trial court found, that Brockhaus violated condition 30 by failing to successfully complete a treatment based drug court program. However, special condition 30 of Brockhaus' probation terms only required Brockhaus to return for her next appearance in drug court on August 15, 2019. Special Condition 29 is the one that required Brockhaus to successfully complete drug court.

Normally, the erroneous citation to a probation condition is considered a scrivener's error that has been found to be harmless. See Washington v. State, 228 So. 3d 707, 708 (Fla. 2d DCA 2017) (affirming the revocation of Washington's community control and remanding to correct a scrivener's error in the revocation order where "[t]he

affidavit of violation described a violation of condition 16 for failing to be at Washington's approved residence but merely cited the wrong condition number" and "[t]he State presented evidence that proved and the trial court found that Washington was away from his approved residence in violation of his community control, a violation of condition 16"). In this case, however, Brockhaus never admitted to being discharged from drug court, nor did she admit to failing to appear at drug court on August 15, 2019. Moreover, the State did not present any evidence, such as testimony from Brockhaus' probation officer or from an employee of the drug court program, to show that Brockhaus was discharged from any program or failed to appear. The affidavit alone is insufficient to revoke Brockhaus' probation. McFarland v. State, 764 So. 2d 834 (Fla. 5th DCA 2000). A defendant participating in drug court pursuant to a plea agreement is entitled to the same due process as a probationer, before being terminated from the drug court program. Gaither v. State, 45 Fla. L. Weekly D1162 (Fla. 5th DCA May 15, 2020).

Accordingly, we reverse the order revoking Brockhaus' probation, vacate the judgment and sentence imposed following that revocation, and remand for further proceedings consistent with this opinion.

REVERSED and REMANDED for further proceedings.

WALLIS and TRAVER, JJ., concur.