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

RENEE KATHERINE MANGINI,

Appellant,

v. Case No. 5D19-3643

STATE OF FLORIDA,

Appellee.

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Opinion filed August 28, 2020

Appeal from the Circuit Court
for Citrus County,
Richard A. Howard, Judge.

James S. Purdy, Public Defender, and Susan A. Fagan, Assistant Public Defender, Daytona Beach, for Appellant.

Ashley Moody, Attorney General, Tallahassee, and Whitney Brown Hartless, Assistant Attorney General, Daytona Beach, for Appellee.

PER CURIAM.

Appellant, Renee Katherine Mangini, appeals the revocation of her probation following a hearing before the trial court. Appellant was charged in September 2019 with violating four conditions of her probation. A hearing was held on the alleged violations in December 2019, in which the trial court found Appellant had substantially and willfully

violated the named conditions of her probation and sentenced her to fifteen years' imprisonment. We find the trial court abused its discretion and reverse and remand with instructions for the trial court to vacate Appellant's judgments and sentences for violation of probation.

The State's affidavits of violation of Appellant's probation in case numbers 2012-CF-0889 and 2012-CF-1185 alleged violations of conditions 2, 26, 32, and 44. The alleged violation of condition 2 asserted Appellant has an arrearage of payments of her probation supervision costs in the amount of $948.09. The alleged violation of condition 26 asserted that Appellant has an arrearage of $92,566.25 as to her court costs payable to the Citrus County Clerk. The alleged violation of condition 32 claimed that Appellant failed to successfully complete or remain in sex offender treatment. Finally, the alleged violation of condition 44 stated that Appellant has an arrearage of $2,887.38 as to the costs of her electronic monitoring.

"A probation revocation hearing is . . . informal . . . [and] the strict rules of evidence can be deviated from, and the admission of hearsay is not error." *Cuciak v. State*, 410 So. 2d 916, 918 (Fla. 1982). "Even with these relaxed rules, however, findings in a violation of probation hearing cannot be based solely on hearsay that could not be admitted as substantive evidence in other proceedings." *Bell v. State*, 179 So. 3d 349, 352 (Fla. 5th DCA 2015). "At a violation of probation [hearing], '[t]he State has the burden to prove by a preponderance of the evidence that the defendant violated a condition of probation willfully and substantially.'" *Knight v. State*, 187 So. 3d 307, 309 (Fla. 5th DCA 2016) (second alteration in original) (quoting *Limbaugh v. State*, 16 So. 3d 954, 955 (Fla. 5th DCA 2009)). "A trial court's determination that a probationer willfully and substantially

violated a term or condition of [her] probation must be supported by competent, substantial evidence."[1] *Laing v. State*, 200 So. 3d 166, 168 (Fla. 5th DCA 2016).

We find that the trial court abused its discretion in finding that Appellant willfully and substantially violated her probation in both case numbers 2012-CF-0889 and 2012-CF-1185. The State's evidence failed to satisfy the State's burden to prove, by a preponderance of the evidence, that Appellant willfully and substantially violated her probation in both cases as to each of the alleged probation violations of conditions 2, 26, 32, and 44. Further, the State's proof was based ***solely*** on hearsay as to the alleged probation violations of conditions 2, 32, and 44 of Appellant's probation in both cases. There was also no proof, hearsay or otherwise, offered by the State as to the arrearage of the Citrus County court costs—the alleged probation violation of condition 26 in both cases. Furthermore, we agree with Appellant's claim of fundamental error because the State failed to establish, by a preponderance of the evidence, Appellant's ability to pay her court costs, probation supervision costs, and electronic monitoring costs in both cases. *See Del Valle v. State*, 80 So. 3d 999, 1011 (Fla. 2011).[2]

Accordingly, we reverse the order finding that Appellant violated probation. We remand this matter to the trial court with instructions to vacate the judgment and sentence of fifteen years' imprisonment, and for entry of an order restoring her to probation under

[1] Competent substantial evidence is evidence that "should be sufficiently relevant and material that a reasonable mind would accept it as adequate to support the [ultimate] conclusion reached." *De Groot v. Sheffield*, 95 So. 2d 912, 916 (Fla. 1957).

[2] We do not disagree with the conclusion of her probation officer that Appellant should spend less time engaged in unpaid volunteer work and more time actively seeking gainful, paying employment.

the original terms and conditions with credit awarded against her probationary term for jail and prison time, if any, served in connection with the underlying proceedings.

REVERSED AND REMANDED WITH INSTRUCTIONS.

ORFINGER, COHEN, and EDWARDS, JJ., concur.