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

REGINALD EUGENE BARRON,

Appellant,

v. Case No. 5D20-332

STATE OF FLORIDA,

Appellee.

_____/

Opinion filed December 31, 2020

Appeal from the Circuit Court
for Marion County,
Lisa D. Herndon, Judge.

James S. Purdy, Public Defender, and
Nancy Ryan, Assistant Public Defender,
Daytona Beach, for Appellant.

Ashley Moody, Attorney General,
Tallahassee, and Deborah A. Chance,
Assistant Attorney General, Daytona
Beach, for Appellee.

TRAVER, J.

Reginald Eugene Barron appeals the revocation of his probation and ensuing sentence for, among other things, absconding. Because the trial court did not advise him of his alleged violations before revoking his probation, we reverse for a new violation of probation hearing.

The trial court placed Barron on drug offender probation following his guilty plea to burglary of a dwelling. About six months later, the trial court issued an arrest warrant for violating his probation in four ways. Although the probation officer listed one of these violations as an unauthorized change of residence, the affidavit did not mention that Barron had absconded. Two months later, the probation officer issued an amended affidavit that added an absconding allegation. When law enforcement arrested Barron, they served him with the first affidavit but not the second.

Three weeks later, Barron appeared for an arraignment before the trial court. The record does not show that anyone advised Barron of his alleged violations of probation before this hearing, and the trial court did not advise him of the alleged violations at the hearing. Instead, the transcript shows that although the trial court had the amended affidavit, the prosecutor and Barron's lawyer did not. Indeed, the trial court expressed some confusion about whether it had the right defendant before it.

In any event, Barron's lawyer announced that Barron wished to admit to violating the four probationary conditions in his first affidavit. Barron's lawyer argued that all four violations were "low-risk," and therefore capped by a 90-day jail sentence.[1] The State agreed. The trial court administered a quick plea colloquy but did not advise Barron of the absconding allegation. After accepting the plea, the trial court revoked Barron's

[1] If a probationer commits a "low-risk violation," "the court shall modify or continue a probationary term . . . ." § 948.06(2)(f)(1), Fla. Stat. (2020). When modifying the probationary term, the trial court may include as a special condition a sentence of up to "90 days in county jail." *Id*. § 948.06(2)(f)(2). The first four violations in the original affidavit are "low-risk violations." *See id*. § 948.06(9)(b). But absconding is not a "low-risk violation." *See id*. § 948.06(9)(d)(3).

probation, found he had absconded, concluded this violation was not "low-risk," and sentenced him to twenty-six months in prison.

A trial court must advise a probationer of a charge of violation. § 948.06(2)(a), Fla. Stat. (2020); *see also Gagnon v. Scarpelli*, 411 U.S. 778, 786 (1973) ("At the preliminary hearing, a probationer or parolee is entitled to notice of the alleged violations of probation or parole . . . ."). Failure to advise a probationer of their charges is a due process violation entitling the probationer to a new revocation hearing. *See Balsinger v. State*, 974 So. 2d 592, 593–94 (Fla. 2d DCA 2008). Because the trial court did not notify Barron of the charges against him, we set aside his admission and sentence and remand for a new violation of probation hearing.

REVERSED and REMANDED.

EVANDER, C.J., and EDWARDS, J., concur