

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

KELLY A. BOSWELL,

Appellant,

v.

Case No. 5D19-2890
5D19-2900

STATE OF FLORIDA,

Appellee.

_____ /

Opinion filed January 29, 2021

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

Matthew J. Metz, Public Defender, and
Teresa D. Sutton, Assistant Public
Defender, Daytona Beach, for Appellant.

Ashley Moody, Attorney General,
Tallahassee, and Rebecca Rock
McGuigan, Assistant Attorney General,
Daytona Beach, for Appellee.

EDWARDS, J.

Appellant, Kelly A. Boswell, appeals the circuit court's orders revoking her probation, adjudicating her guilty, and sentencing her to a 31.2-month term of imprisonment with the Department of Corrections. She argues that the court erred by conducting an abbreviated hearing and subsequently terminating her from participation

in drug court, rather than conducting a full violation of probation hearing. The State has commendably conceded error, and we agree that Appellant is entitled to full violation of probation proceedings in accordance with *Gaither v. State*, 296 So. 3d 553 (Fla. 5th DCA 2020). *Gaither* dealt with a matter of first impression in Florida and was decided after Appellant was sentenced; thus, it was not available to guide the trial court in conducting the proceedings that led to Appellant's imprisonment.

We reverse the subject orders, judgments, and sentences that resulted in Appellant's imprisonment with the Department of Corrections and remand with instructions for the circuit court to promptly conduct full revocation of probation proceedings, as described in *Gaither*, to ensure that Appellant is afforded due process.

REVERSED AND REMANDED WITH INSTRUCTIONS.

EVANDER, C.J. and SASSO, JJ., concur.