

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

JONISHA SMITH,

Appellant,

v.

Case No. 5D20-866

STATE OF FLORIDA,

Appellee.

Opinion filed March 12, 2021

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

Matthew J. Metz, Public Defender,
and Edward J. Weiss, Assistant
Public Defender, Daytona Beach, for
Appellant.

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

WALLIS, J.

Appellant, Jonisha Smith, appeals the order revoking her probation.

We affirm the revocation and hold that there is competent, substantial

evidence to support the revocation based on Appellant's violation of Condition 1 for failing to report and Condition 5 for committing a new law violation by driving with a suspended license.

However, the revocation order improperly includes a second violation of Condition 5 for a new petit theft crime and a violation of Condition 2 for failure to make restitution payments, even though the State abandoned these violations at the revocation hearing. Therefore, we remand for the trial court to issue a corrected order. See Henley v. State, 117 So. 3d 1125, 1127 (Fla. 3d DCA 2012) (reversing order finding probation violations for conditions that the State announced it would be abandoning prior to commencement of the probation violation hearing). On remand, the trial court shall determine if it would have revoked Appellant's probation based only on the violations regarding failure to report and driving with a suspended license. See Hill v. State, 301 So. 3d 1081, 1082 (Fla. 1st DCA 2020) (remanding for the trial court to consider "whether it would have revoked the appellant's probation and imposed the same sentences in the absence of a violation of condition six").

AFFIRMED and REMANDED with Instructions.

SASSO and NARDELLA, JJ., concur.