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

JOSEPH TOOMEY,

Appellant,

v.

Case No. 5D21-994
LT Case No. 05-2011-CF-027156-C

STATE OF FLORIDA,

Appellee.
_____/

Opinion filed October 15, 2021

Appeal from the Circuit Court for Brevard County, Jeffrey Mahl, Judge.

Matthew J. Metz, Public Defender, and Ryan Belanger, Assistant Public Defender, Daytona Beach, for Appellant.

Ashley Moody, Attorney General, Tallahassee, and Daniel P. Caldwell, Assistant Attorney General, Daytona Beach, for Appellee.

COHEN, J.

Joseph Toomey appeals the trial court's judgment and sentence, which revoked his probation and sentenced him to eleven years in prison. Toomey

argues that the trial court erred when it relied entirely upon hearsay in finding that he had violated two conditions of his probation. We agree and reverse.

Toomey had pled guilty to manslaughter and was originally sentenced to 112.8 months in prison followed by three years' probation. Months after serving his prison sentence and beginning his probationary period, Toomey's probation officer filed an affidavit of violation of probation, alleging violations of conditions one and three. Specifically, the affidavit alleged:

> Violation of Condition (1) of the Order of Probation, . . . Officer Rosser states that the offender did falsely report his address on the report submitted for the month of October, knowing same to be false when in truth the offender did not update his address . . . .
>
> Violation of Condition (3) of the Order of Probation, [by] changing his residence without first procuring the consent of the probation officer, . . . as told to this officer by the owner of the residence during a residence verification.

At the violation of probation hearing, the probation officer testified that upon reporting to Toomey's listed home address, the officer spoke with an unidentified individual who he believed owned the property.[1] The individual related that Toomey had stayed at that location for a few days but had been in Daytona for the past several weeks, during which Toomey had not spoken

[1] That individual was later identified by Toomey as George Williams, Sr., a neighbor who lived above Toomey.

to him. Thereafter, the probation officer made unsuccessful attempts to contact Toomey via e-mail and phone to verify his residence. The officer acknowledged that he did not make any attempt to enter the home or determine the identity of the individual purporting to have knowledge of Toomey's residency.

In contrast, Toomey testified that he was still living in the same residence that he had reported, which contained an upstairs and a downstairs unit. Toomey explained that he rarely interacted with his upstairs neighbor, as the home had two separate entrances and the neighbor was "in and out of the hospital" due to health issues. Toomey also testified that his possessions and clothing were still at that home.

The trial court found that the testimony established Toomey's violation of conditions one and three. As a result, it revoked his probation and sentenced him to eleven years in prison. This appeal followed.

We begin by noting matters highlighted within the State's answer brief which are irrelevant to our determination of this appeal. The State focused much of its attention on testimony concerning Toomey's place of employment and a separate incident where Toomey had reported to the probation office a day earlier than what was ordered and then failed to report

the next day as instructed. Neither of those issues served as grounds for the affidavit of violation of probation.

Instead, the violations of probation pertained only to allegations that Toomey had falsely reported his address and had failed to obtain consent for a change of residence. The only evidence presented by the State on those issues was the probation officer's testimony regarding a conversation he had with an individual whose identity had not been determined with any certainty, and the information provided was never verified. Therefore, we find the evidence presented consisted entirely of hearsay, rendering it insufficient to sustain a violation of conditions one and three as alleged. See Stratton v. State, 294 So. 3d 1004 (Fla. 5th DCA 2020).

REVERSED.

WALLIS and TRAVER, JJ., concur.