

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

JULY TERM 2010

D.T.M., A CHILD,

Petitioner,

v.

Case No. 5D10-2936

STATE OF FLORIDA,

Respondent.

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Opinion filed October 14, 2010

Appeal from the Circuit
Court for Volusia County,
John W. Watson, III, Judge.

James S. Purdy, Public Defender
and David S. Morgan, Assistant Public
Defender, Daytona Beach, for Petitioner.

Bill McCollum, Attorney General,
Tallahassee, and Robin A. Compton,
Assistant Attorney General, Daytona
Beach, for Respondent.

PER CURIAM.

D.T.M. (a juvenile) has filed a petition seeking a writ of habeas corpus, claiming that he is being unlawfully detained because the trial court improperly violated his probation without any affidavit of violation having been filed. We agree.

Rule 8.120(a)(2) of the Florida Rules of Juvenile Procedure requires that "[a]ny proceeding alleging a violation shall be initiated by the filing of a sworn affidavit of the material facts supporting the allegation ... executed by the child's juvenile probation officer or other person having actual knowledge of the facts." The trial court may initiate

revocation proceedings by the entry of an order, but that order "must incorporate and reference the affidavit described in subdivision (a)(2)." Fla. R. Juv. P. 8.120(a)(4).

In this case, no affidavit appears in the record or court docket. The docket merely indicates that the trial court received an e-mail alleging that D.T.M. had absconded in violation of his probation. The plain language of rule 8.120 requires a sworn affidavit.

Accordingly, we grant D.T.M.'s petition and order that he be released from commitment and reinstated to probation. This order is without prejudice to the initiation of a proper revocation proceeding.

PETITION GRANTED.

PALMER, ORFINGER and EVANDER, JJ., concur.