IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

PATRICIA NICOLE JUNK,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

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NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED

CASE NO. 1D16-3636

Opinion filed November 30, 2017.

An appeal from the Circuit Court for Escambia County.
Jennie M. Kinsey, Judge.

Andy Thomas, Public Defender; and Steven L. Seliger, Assistant Public Defender, for Appellant.

Pamela Jo Bondi, Attorney General; and David Llanes, Assistant Attorney General, Tallahassee, for Appellee.

PER CURIAM.

Patricia Nicole Junk was adjudicated guilty and sentenced to six months of probation after entering a negotiated plea. She signed a plea form agreeing to comply with all standard conditions of probation as required by statute. She violated her probation and was sentenced to eleven months and thirty days in county jail, with credit for time served, which would have been a legal sentence for

her underlying offense. The specific violations of probation alleged were as follows: (1) failing to report to her probation officer in December 2015 and January 2016; (2) changing her residence without consent; (3) failing to report to her probation officer on November 23, 2015; and (4) refusing to submit to drug and alcohol tests.

Consistent with the State's concession of error, we reverse as to the second and fourth violations for changing residence without consent and refusing to submit to drug and alcohol tests, because the trial court did not orally pronounce these findings. *See Maddox v. State*, 619 So. 2d 473, 473 (Fla. 1st DCA 1993) (remanding with instructions to amend the written revocation order to comport with court's oral pronouncements). We nevertheless affirm the order revoking probation and the sentence imposed.

A preponderance of the evidence standard applies. *Van Wagner v. State*, 677 So. 2d 314, 316 (Fla. 1st DCA 1996). A violation of probation must be both substantial and willful to justify revoking probation. *Burgin v. State*, 623 So. 2d 575, 576 (Fla. 1st DCA 1993); *see also Savage v. State*, 120 So. 3d 619, 621 (Fla. 2d DCA 2013) (explaining competent substantial evidence standard as threshold question for findings of substantiality and willfulness). The trial court's finding of substantial and willful violations is reviewable for abuse of discretion. *Lawson v. State*, 969 So. 2d 222, 229 (Fla. 2007) (applying abuse of discretion standard to

trial court's ultimate decision to revoke probation). Here, defense counsel stipulated that Appellant's violations of probation were substantial, and argued only willfulness.

We affirm the trial court's finding that Appellant willfully violated her probation by failing to report to her probation officer on November 23, 2015. The record reflects that Appellant was instructed where to go for the initial meeting with her probation officer, but went to the wrong office. She was told that she was at the wrong office, and was told again where to go to meet with her probation officer. She nevertheless failed to report to the correct address and failed to make any further contact, ever, with her probation officer. The defense argued that Appellant's mistaken reporting to the wrong probation field office for the initial meeting with her probation officer exhibited an attempt to comply and thus was not willful.

A preponderance of competent, substantial evidence supports the trial court's finding that Appellant's violation was willful. Our conclusion is bolstered by the fact that Appellant made no further effort to report to her probation officer. A defendant's complete failure to report to the assigned probation officer establishes a substantial and willful violation. *Brown v. State*, 776 So. 2d 329, 330 (Fla. 5th DCA 2001) (affirming order revoking probation after appellant "failed to report at all"). In *Brown*, the defendant reported to his probation officer for an

initial meeting, but the officer did not have the defendant's file yet, and therefore told him to contact the officer the following week. He failed to do so. The appellate court affirmed the trial court's finding of a substantial and willful violation of probation, describing the defendant's "failure to report at all" as showing "'a complete indifference to compliance with [the] conditions of probation.'" *Brown*, 776 So. 2d at 330 (quoting *Goley v. State*, 584 So. 2d 139, 141 (Fla. 5th DCA 1991)). On the facts presented, we need not evaluate separately whether Appellant's failure to report during the two months before the probation officer filed the affidavit of violation of probation constituted a separate violation or impacted the sentence imposed. Appellant's "complete lack of effort to contact [her] probation officer and [her] complete indifference to [her] obligations" is sufficient to support revocation of probation. *Grimsley v. State*, 408 So. 2d 1075, 1075 (Fla. 2d DCA 1982).

The trial court was within its discretion to impose an eleven-month, thirty-day sentence on these facts. *See* § 948.06(2)(e), Fla. Stat. (2015) (allowing trial court upon revocation of probation to impose "any sentence which it might have originally imposed before placing the probationer on probation"). Appellant's counsel conceded at the hearing that Appellant faced this sentence, but argued for leniency. The state reviewed the facts giving rise to the violation, and Appellant's prior record of six misdemeanors. The trial court immediately imposed this

sentence after orally adjudicating Appellant guilty of failing to report. We therefore affirm the order of revocation and the sentence imposed. *See Grimsley*, 408 So. 2d at 1076 (affirming both revocation and sentence where record satisfied appellate court that trial court would impose the same sentence).

AFFIRMED in part, REVERSED in part, and REMANDED for further proceedings consistent with this opinion.

B.L. THOMAS, C.J., and KELSEY, J., CONCUR; RAY, J., CONCURS IN PART AND DISSENTS IN PART WITH OPINION.

RAY, J., CONCURRING IN PART AND DISSENTING IN PART.

I concur with the majority's affirmance of the trial court's finding of a violation for Appellant's failure to report to her probation officer on November 23, 2015, and the reversal of the findings of violation for her change of residence and refusal to submit to drug and alcohol tests. Unlike the majority, I would evaluate separately whether Appellant violated her probation by failing to report to her probation officer in December 2015 or January 2016. Finding no competent, substantial evidence of a willful violation, I would remand for the trial court to reconsider revocation and sentencing.

Appellant argues that her failure to report to her probation officer in December 2015 or January 2016 was not willful. The record contains Appellant's Order of Probation, which includes the standard probation condition that she "report to the probation officer as directed." At the hearing, the State presented no evidence that Appellant was directed to report to the probation officer on any occasion in December 2015 or January 2016. Thus, no competent, substantial evidence supports the trial court's finding of a violation on these dates.

Although the sole remaining violation is reason enough to revoke Appellant's probation, because the record does not establish that the trial court would have revoked probation and entered the same sentence based on this violation alone, I would remand for the trial court to reconsider revocation and

sentencing. *See Washington v. State*, 215 So. 3d 202 (Fla. 1st DCA 2017) (reversing for reconsideration while affirming findings sufficient to support revocation of probation).