FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D19-2831

JOSHUA LEE COLLEY,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

On appeal from the Circuit Court for Okaloosa County.
Michael A. Flowers, Judge.

August 28, 2020

OSTERHAUS, J.

Joshua Lee Colley challenges his judgment and sentence after admitting to a violation of his probation. Colley argues that the plea colloquy at his violation of probation (VOP) hearing was not proper under Florida Rule of Criminal Procedure 3.172(c), because he was not apprised of the consequences of admitting to violating the terms of his probation and because his plea wasn't intelligently, knowingly, and voluntarily entered. We reverse and remand so that Colley can receive a proper colloquy. We do not depart, however, from previous cases holding that rule 3.172 does not apply in probation revocation proceedings.

Section 948.06(2)(a), Florida Statutes, sets forth the basic duties of a trial court in a VOP proceeding where a probationer admits to violating the terms of probation:

> The court, upon the probationer or offender being brought before it, shall advise him or her of such charge of violation and, if such charge is admitted to be true, may forthwith revoke, modify, or continue the probation or community control or place the probationer into a community control program.

Contrary to Colley's argument, trial courts in probation revocation proceedings need not apply rule 3.172, which sets forth procedures for accepting guilty pleas in criminal prosecutions. *See Arroyo v. State*, 200 So. 3d 250, 253 n.2 (Fla. 1st DCA 2016); *see also Johnson v. State*, 776 So. 2d 1024, 1025 (Fla. 1st DCA 2001) ("Upon a guilty plea to a probation violation, there is no requirement that a determination be made as to the factual basis of the plea or that the plea was freely and voluntarily given."). Indeed, the law is clear that probationers are not entitled to the full panoply of rights guaranteed to defendants in criminal prosecutions. *See Peters v. State*, 919 So. 2d 624, 626 (Fla. 1st DCA 2006) (citing *Morrissey v. Brewer*, 408 U.S. 471, 480 (1972)).

Nevertheless, courts must follow other procedural requirements in probation revocation proceedings. We have recognized in particular that the minimum colloquy in such proceedings "must inform the defendant of the allegations against him, his right to counsel, and the consequences of an admission or the right to a hearing and it shall afford him an opportunity to be heard." *Johnson v. State*, 107 So. 3d 1153, 1154 (Fla. 1st DCA 2013); *Donaldson v. State*, 219 So. 3d 996 (Fla. 1st DCA 2017); *cf. Davis v. State*, 187 So. 3d 1284 (Fla. 1st DCA 2016) (reversing because of a deficient guilty-plea colloquy under rule 3.172(c), as well as a deficient VOP-admission colloquy); *Haug v. State*, 151 So. 3d 560, 561 (Fla. 1st DCA 2014) (same). In this case, because the transcript indicates that Colley wasn't apprised of the potential consequences of his admission, we agree with his argument, and with the State's concession, that remand is necessary to provide for a proper colloquy. *See Donaldson*, 219 So. 3d 996 (remanding because the probationer wasn't informed of the consequences of his admission).

REVERSED and REMANDED.

ROBERTS and M.K. THOMAS, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Andy Thomas, Public Defender, John Villafrate, Assistant Public Defender, and Megan Long, Assistant Public Defender, and Tallahassee, for Appellant.

Ashley Moody, Attorney General, and Heather Flanagan Ross, Assistant Attorney General, Tallahassee, for Appellee.