FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D20-3112

TIONNE RASHAD WILLIAMS,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

On appeal from the Circuit Court for Duval County.
Adrian G. Soud, Judge.

August 20, 2021

PER CURIAM.

Tionne Rashad Williams challenges the trial court's revocation of his probation. Williams argues that his actions in staying out past curfew did not amount to a willful and substantial violation of the terms of his probation. We affirm.

I.

Williams pleaded guilty in 2016 to second-degree murder, attempted armed burglary, and conspiracy to commit armed robbery. Williams cooperated in the case and, as a result, the trial court sentenced him to seven days in the Duval County Jail followed by 10 years of probation. Among other special conditions,

the trial court imposed a curfew requiring Williams to remain at his residence between 10PM and 6AM.

Williams violated his probation for the first time in May 2018 when he possessed a stolen car, travelled to South Carolina without permission, and tested positive for cannabis. Despite the violations, the trial court modified and continued Williams' probation.

Law enforcement again arrested Williams for a probation violation in December 2019 when officers encountered him on a beach after curfew. Soon after, Williams' probation officer filed an affidavit alleging a probation violation for missing curfew. At the violation of probation hearing the State called three witnesses, including Pinellas County Sherriff's Deputy Robert Duckers. Williams testified in his own defense.

Deputy Duckers testified that, on the night of the violation, someone called law enforcement at 10:26PM to report juveniles that smelled of marijuana walking onto Madeira Beach. Within minutes, Deputy Duckers responded to the scene. There, he met several other responding deputies who identified Williams and his friends as the individuals that prompted the call. The deputies had come upon the group several hundred feet onto the beach. Although the deputies could smell marijuana, they did not locate any. The responding deputies ran Williams' identity. When it became clear he was out past curfew, they arrested him for violating the terms of his probation.

Williams testified that after leaving a restaurant with two friends, the trio arrived at Madeira Beach around 9:30PM. Williams did not drive himself, he did not know the distance between the beach and his home, he had never been to Madeira Beach before, and he inadvertently lost track of time after his phone's battery died. On cross-examination, Williams confirmed he did not ask to go home, he at no point asked either of his friends for the time, and he did not ask to use either of his friends' phones to request help from a third party. Williams did testify, however, that just before the deputies arrived, he suspected it was getting late and was making his way back to his friend's car.

The trial court found Williams willfully and substantially violated his probation. In explaining its ruling, the trial court rejected Williams' assertion that he had inadvertently lost track of time:

> It is also important for the Court in the analysis . . . . He arrived at 9:30, 11 miles away from his house. If he had arrived at 7:00 o'clock and enjoyed a cookout and just simply forgot and was hurrying back to his house, that is an entirely different dynamic. But on the facts presented to the Court in evidence, it is simply unsustainable to say that it is an inadvertent negligent mistake of curfew, given where he was, the time of his arrival and the allegation that his phone died, which that may have occurred. To remember he only had 11 percent battery at a given moment back on December 28th of 2019 is a substantial amount of recall on that fact. But he knows he got out of the car at 9:30, a substantial drive away from his house in St. Petersburg, Florida.

The trial court also pointed to evidence that the call came in at 10:26PM, and deputies found Williams with his friends hundreds of feet onto the beach. The trial court revoked Williams' probation and sentenced him to 24.75 years in prison.

II.

We review a trial court's decision to revoke probation for an abuse of discretion. *Hill v. State*, 301 So. 3d 1081, 1082 (Fla. 1st DCA 2020). Competent, substantial evidence must support any factual findings on which that revocation decision is based. *White v. State*, 170 So. 3d 144, 145 (Fla. 1st DCA 2015). Competent, substantial evidence is "such evidence as will establish a substantial basis of fact from which the fact at issue can be reasonably inferred." *Savage v. State*, 120 So. 3d 619, 622 (Fla. 2d DCA 2013) (quoting *De Groot v. Sheffield*, 95 So. 2d 912, 916 (Fla. 1957)). When seeking revocation, the prosecution must prove by a preponderance of the evidence that a probationer willfully violated a substantial condition of probation. *Brown v. State,* 221 So. 3d 731, 733 (Fla. 1st DCA 2017).

Williams argues the State failed to produce competent, substantial evidence that he willfully and substantially violated curfew. He relies on several cases to support his contention that his conduct was merely the product of ineptitude or negligence: *Rousey v. State*, 226 So. 3d 1015 (Fla. 2d DCA 2017); *McCray v. State*, 754 So. 2d 776 (Fla. 3d DCA 2000); and *Stevens v. State*, 599 So. 2d 254 (Fla. 3d DCA 1992).

First, competent, substantial evidence supports the trial court's findings. As the trial court noted, the call to law enforcement came in at 10:26PM—after Williams' curfew—and reported individuals entering the beach. Even accepting Williams' account that he arrived at the beach at 9:30PM, knowingly going to a location that he had never been before so close to curfew represents a substantial risk of non-compliance of which Williams could not have been unaware. *Cf. Timke v. State*, 313 So. 3d 714, 716–17 (Fla. 2d DCA 2020) (upholding the lower court's decision to revoke probation when record showed that probationer left his home on a Saturday night to travel to the downtown area of a major city ninety minutes before curfew and arrived home twenty-six minutes past curfew).

Second, Williams relies on a handful of decisions from other districts. While these cases are not controlling, we find they address significantly different factual circumstances. All involve probationers who—while trying to comply with their probation terms—encountered unexpected obstacles outside their control. *See, e.g.*, *Rousey*, 226 So. 3d at 1017 (reversing a lower court's revocation of probation because a delay in returning from an approved trip based on car trouble did not amount to a willful and substantial violation); *McCray*, 754 So. 2d at 778 (reversing a lower court's revocation of probation because unexpected car trouble did not qualify as a willful and substantial violation of the terms of probation); *Stevens*, 599 So. 2d at 254–55 (reversing a lower court's revocation of probation because the probationer's car problems and subsequent unsuccessful "series of quixotic and inept efforts to reach [a required meeting]" did not amount to a willful and substantial violation of probation). Williams was neither waylaid by an issue outside his control, nor seeking to comply with the terms of his probation.

Contrary to *Rousey* and *McCray*, no unexpected impediment prevented Williams from following the terms of his probation. In those cases, the probationers experienced car trouble and had no available way to return home on time. Williams was with friends and could have requested, at any time, to return home or borrow a phone.

Similarly, with his curfew looming, Williams' lack of effort to ever discern the time suggests willful ignorance rather than negligent forgetfulness. While Williams had every right to be away from his residence until 10PM, his actions before and during his violation of curfew do not portray some inept attempt to comply, as in *Stevens*. From this, the trial court could reasonably infer Williams lacked any concern about complying with the curfew provision of his probation.

On the record before us, the trial court's conclusion that Williams willfully and substantially violated his probation was supported by competent, substantial evidence. Because we cannot say the trial court abused its discretion, we affirm.

AFFIRMED.

B.L. THOMAS, BILBREY, and NORDBY, JJ., concur.

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

Jessica J. Yeary, Public Defender, Megan Lynne Long, Assistant Public Defender, and Kathleen Pafford, Assistant Public Defender, Tallahassee, for Appellant.

Ashley Moody, Attorney General, Robert Quentin Humphrey, Assistant Attorney General, Tallahassee, for Appellee.