

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

STATE OF FLORIDA,
Appellant,

v.

JEFFREY HICKS,
Appellee.

No. 4D16-2771

[April 12, 2017]

Appeal from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Bernard I. Bober, Judge; L.T. Case No. 09-17709CF10A.

Pamela Jo Bondi, Attorney General, Tallahassee, and Richard Valuntas, Assistant Attorney General, West Palm Beach, for appellant.

Carey Haughwout, Public Defender, and Narine N. Austin, Assistant Public Defender, West Palm Beach, for appellee.

FORST, J.

In this criminal appeal, the State of Florida appeals the trial court's order granting Appellee Jeffrey Hicks's motion to dismiss for lack of jurisdiction. The State argues that because it alleged in its violation of probation warrant ("VOP warrant") that Appellee absconded, the trial court retained jurisdiction to consider the VOP warrant even after the expiration of Appellee's probationary period.

The trial court abused its discretion by granting Appellee's motion to dismiss. *See State v. Balezos*, 765 So. 2d 819, 822 (Fla. 4th DCA 2000) (applying abuse of discretion standard). The analysis and holding of our recent opinion in *Williams v. State*, 202 So. 3d 917 (Fla. 4th DCA 2016), are directly on point. There, the State's VOP warrant, identical to the one here, suggested Appellee absconded by changing his residence without consent, and making his current whereabouts unknown. *Id.* at 921. As set forth in *Williams*, "[o]ur supreme court and three of our sister courts have recognized that probation is tolled when a defendant absconds from [probationary] supervision." *Id.* at 920-21 (citing *Francois v. State*, 695 So. 2d 695, 697 (Fla. 1997); *Kimball v. State*, 890 So. 2d 495, 496 (Fla. 5th

DCA 2004); *Williams v. State*, 529 So. 2d 366, 367 (Fla. 2d DCA 1988); *Ware v. State*, 474 So. 2d 332, 334 (Fla. 1st DCA 1985)). Our *Williams* opinion clarified that this Court's earlier opinion in *Mobley v. State*, 197 So. 3d 572 (Fla. 4th DCA 2016) "does not overrule the case law recognizing that when a probationer absconds from supervision, the probationary period is tolled until the probationer is once more placed under probationary supervision." *Williams*, 202 So. 3d at 921.

Accordingly, we reverse and remand to the trial court to determine under the totality of the circumstances if Appellee did in fact abscond from probationary supervision. If the trial court finds that Appellee did abscond, then Appellee's probationary period was tolled until he was arrested and the trial court would have jurisdiction to consider the VOP warrant and any amendments to it.

Reversed and remanded.

TAYLOR and CONNER, JJ., concur.

* * *

Not final until disposition of timely filed motion for rehearing.