

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

DEVONTE DEVON CLARK,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D19-3974

[November 4, 2020]

Appeal from the Circuit Court for the Nineteenth Judicial Circuit, Indian River County; Dan L. Vaughn, Judge; L.T. Case Nos. 312017CF000106A, 312018CF000187A, 312017CF000552A.

Carey Haughwout, Public Defender, and Alan T. Lipson, Assistant Public Defender, West Palm Beach, for appellant.

Ashley Moody, Attorney General, Tallahassee, and Richard Valuntas, Assistant Attorney General, West Palm Beach, for appellee.

PER CURIAM.

Appellant was on probation for several drug offenses and, as a condition of probation, had a curfew between 10:00 p.m. and 6:00 a.m. One night when his girlfriend came home after work, they went to the store for work supplies. They left at 11:15 p.m. and were stopped by deputies at 1:40 a.m. In revoking appellant's probation, the trial court found that he violated his probation by being out at 11:15 p.m. He argues on appeal that this was not a substantial violation of probation, but we disagree. See *Lopez v. State*, 722 So. 2d 936, 937 (Fla 4th DCA 1988) ("Absence from the home without permission supports a finding of a willful and substantial violation of community control."). In this case, unlike others, there was no emergency, and the absence was not for a short period of time. Appellant was out for almost four hours in the middle of the night.

While appellant also argues that the trial court did not find that the violation was a willful and substantial violation, at the revocation hearing the trial court found the violation was willful. At sentencing the court also stated that appellant had violated probation in a "material" way. We

conclude that a statement that the violation is “material” is the equivalent to stating that it is “substantial.” In the sense that “material” is used here, the dictionary defines it as “having *real importance* or great consequence.” Merriam-Webster.com, <https://www.merriam-webster.com/dictionary/material> (last visited October 15, 2020) (emphasis added). “Substantial” is defined as “*real, true*” and “*important, essential*.” Merriam-Webster.com, <https://www.merriam-webster.com/dictionary/substantial> (last visited October 15, 2020) (emphasis added). As the definitions are essentially the same, the court made the necessary findings in order to revoke probation.

Affirmed.

WARNER, GERBER and ARTAU, JJ., concur.

* * *

Not final until disposition of timely filed motion for rehearing.