

DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

KEITH MILLER,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

No. 2D20-2954

October 20, 2021

Appeal from the Circuit Court for Hillsborough County; Kimberly K. Fernandez, Judge.

Howard L. Dimmig, II, Public Defender, and Pamela H. Izakowitz, Assistant Public Defender, Bartow, for Appellant.

Ashley Moody, Attorney General, Tallahassee, and Peter N. Koclanes, Assistant Attorney General, Tampa, for Appellee.

LaROSE, Judge.

Keith Miller appeals the order revoking his probation, resulting judgments, and prison sentences imposed in case numbers 2015-

CF-07571, 2015-CF-17786, and 2016-CF-3758.¹ We affirm the revocation, judgments, and resulting sentences. We remand for entry of a corrected revocation order that conforms to the trial court's oral pronouncement and corrects scrivener's errors regarding the conditions of probation that Mr. Miller violated.

The affidavit of violation of probation alleged that Mr. Miller violated condition 4 by possessing a firearm, condition 5 by possessing oxycodone hydrochloride, condition 6 by associating with others engaged in criminal activity, and condition 7 (three times) by possessing oxycodone hydrochloride, marijuana, and cocaine.

At the revocation hearing, the trial court found that "Mr. Miller violated condition 5 of his probation of being in possession of the firearm" and "violated condition 5 with respect to the marijuana and the pills [of oxycodone hydrochloride] . . . and that the State has proven by a preponderance of the evidence that he committed those new law violations." The written revocation order stated that Mr. Miller violated probation conditions 5, 6, and 7.

¹ We have jurisdiction. See Fla. R. App. P. 9.030(b)(1)(A).

Mr. Miller argues that the written revocation order fails to comport with the trial court's oral pronouncement regarding the conditions of probation that he violated; the State concedes the discrepancy. Where the trial court's oral pronouncement and written revocation order conflict, the written revocation order must be corrected to comport with the oral pronouncement. *See Welch v. State*, 310 So. 3d 468, 468 (Fla. 2d DCA 2020).

We observe that the trial court cited the wrong condition numbers at the hearing. The trial court orally found that Mr. Miller violated condition 5 by possessing the firearm and "with respect to the marijuana and [oxycodone hydrochloride]." Yet, the affidavit described the firearm possession as a violation of condition 4. The affidavit also described the possession of marijuana as a violation of condition 7—not condition 5. The affidavit also charged possession of oxycodone hydrochloride as violations of both conditions 5 and 7.

Clearly, the trial court found Mr. Miller in violation of conditions 4, 5, and 7 (twice). On remand, the trial court shall correct the revocation order to reflect that Mr. Miller violated those conditions. *See Quijano v. State*, 270 So. 3d 549, 552-53 (Fla. 2d DCA 2019) (remanding "for the trial court to issue a revocation

order denoting that he committed a violation of condition 33 instead of condition 21" where condition 33 applied, the trial court erroneously cited condition 21, and the conditions were based on the same conduct); *Washington v. State*, 228 So. 3d 707, 708 (Fla. 2d DCA 2017) (remanding to correct a scrivener's error in the revocation order where the affidavit "described a violation of condition 16 for failing to be at his approved residence but merely cited the wrong condition number" and the trial court found the defendant guilty of such conduct); *Reed v. State*, 127 So. 3d 817, 819-20 (Fla. 2d DCA 2013) ("[W]hile the references to condition '15' violations in the revocation order were the product of a mistake in the amended affidavit, to avoid any confusion the order entered on remand should reflect the correct condition number.").

Additionally, the written revocation order specified that Mr. Miller violated condition 6. But the trial court made no oral findings regarding condition 6 or the alleged association with others engaged in criminal activity. The trial court shall correct the revocation order on remand to conform to its oral pronouncement. *See Musser v. State*, 108 So. 3d 670, 671 (Fla. 2d DCA 2013) ("[B]ecause the order of revocation suggests that Musser committed

violations which were not addressed in the court's factual findings, we reverse and remand for the entry of an order consistent with the court's oral pronouncement."); *Hernandez v. State*, 254 So. 3d 1091, 1092 (Fla. 3d DCA 2018) (remanding for correction of written revocation order to conform to oral pronouncement where the order included "two probation violations that the trial court made no finding on"); *Laffitte v. State*, 16 So. 3d 315, 316 (Fla. 3d DCA 2009) (remanding for the trial court to correct the written revocation order to conform to the oral pronouncement where the order specified conditions violated that did not appear in the oral pronouncement).

Affirmed; remanded for correction of scrivener's errors.

MORRIS, C.J., and SILBERMAN, J., Concur.

Opinion subject to revision prior to official publication.