

DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

MARK ALLEN DOUGLAS,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

No. 2D21-1642

December 2, 2022

Appeal from the Circuit Court for Lee County; Robert J. Branning,
Judge.

Howard L. Dimmig, II, Public Defender, and Tosha Cohen,
Assistant Public Defender, Bartow, for Appellant.

Ashley Moody, Attorney General, Tallahassee, and David Campbell,
Assistant Attorney General, Tampa, for Appellee.

ATKINSON, Judge.

Mark Allen Douglas appeals the trial court's order revoking his
probation based on a violation of special condition 19 of his
community control and probation. Douglas argues that the trial

court erred by failing to make specific factual findings in its written order determining Douglas to be a danger to the community pursuant to section 948.06(8)(e), Florida Statutes (2021). We agree and reverse the revocation order because it cannot be determined from the record whether the trial court would have revoked Douglas's probation if the trial court had not erroneously determined him to be a danger to the community.

Section 948.06(8) imposes procedures and requirements for determining whether a probationer is a violent felony offender of special concern (VFOSC). "If the court, after conducting [a violation of probation] hearing . . . , determines that a [VFOSC] has committed a violation of probation . . . other than a failure to pay costs, fines, or restitution, the court *shall*: 1. Make written findings as to whether or not the [VFOSC] poses a danger to the community" considering the factors enumerated in section 948.06(8)(e)1.a–e. § 948.06(8)(e) (emphasis added).

The trial court's order finding Douglas to be a danger to the community lists the factors that the trial court considered in determining that Douglas posed a danger to the community:

(i) the nature and circumstances of the violation and any new offenses charged; (ii) the defendant's present conduct, including criminal convictions; (iii) the defendant's amenability to non-incarcerative sanctions based on his or her history and conduct during the probation or community control supervision from which the violation hearing arises and any other previous supervisions, including disciplinary records of previous incarcerations; (iv) the weight of the evidence against the defendant; and (v) other relevant facts.

The five factors the trial court listed in its order are the five factors enumerated in section 948.06(8)(e)1—reproduced almost verbatim. The trial court's order did not include any specific factual findings particular to Douglas's case or explain its reasoning for concluding that Douglas was a danger to the community. The trial court did not make any oral findings or explain its reasoning at the hearing. Therefore, the trial court failed to make sufficient written findings to support its ruling. *Cf. McCray v. State*, 282 So. 3d 158, 162 (Fla. 2d DCA 2019) (concluding that the trial court failed to make sufficient written findings to support its conclusion that the defendant was a danger to the community and noting that the trial court's order did not orally find "specific facts under 948.06(8)(e) upon which it relied to revoke supervision"); *Bailey v. State*, 136 So. 3d 617, 620 (Fla. 2d DCA 2013) (explaining that the preprinted

form order used by the trial court was likely insufficient and concluding that even if the form was sufficient, the trial court's findings were insufficient because the trial court did not indicate which factors it considered and did not make any oral findings at the hearing to support its conclusion that the defendant was a danger to the community); *Martin v. State*, 87 So. 3d 813, 813 (Fla. 2d DCA 2012) (affirming revocation of the defendant's probation but remanding for correction of the written order finding the defendant to be a danger to the community because "the trial court orally pronounced a reason that is consistent with section 948.06(8)(e)(1)(c)").

There is evidence in the record supporting the trial court's finding that Douglas would pose a danger to the community if released. However, because the trial court's order does not satisfy the requirements of section 948.06(8)(e) and the trial court did not make any specific oral findings to support its conclusion at the sentencing hearing, its order finding Douglas to be a danger to the community was erroneous and must be stricken. We therefore must reverse the revocation order because it cannot be determined from the record whether the trial court would have revoked

Douglas's probation if the trial court had not determined him to be a danger to the community. See § 948.06(8)(e)2a–b ("If the court has found that a violent felony offender of special concern poses a danger to the community, the court *shall* revoke probation and shall sentence the offender up to the statutory maximum, or longer if permitted by law. . . . If the court has found that a [VFOSC] *does not* pose a danger to the community, the court *may revoke, modify, or continue the probation* or community control or may place the probationer into community control as provided in this section." (emphasis added)); *Bailey*, 136 So. 3d at 620–21 (striking the trial court's designation under section 948.06(8)(e) because the trial court failed to make sufficient written findings); *see also Barber v. State*, 207 So. 3d 379, 383 (Fla. 5th DCA 2016) (distinguishing *Bailey* and concluding that "[t]here is nothing in the [*Bailey*] opinion indicating that the court meant to strike the designation [as a VFOSC] under sections 948.06(8)(b)–(d)," only that this court struck the trial court's "designation" of the defendant as a danger to the community under section 948.06(8)(e)). On remand, the trial court must strike the designation that Douglas is a danger to the community and may determine anew whether to revoke Douglas's

probation. The trial court may reimpose the designation if it makes the requisite written findings based on record evidence. *See Bailey*, 136 So. 3d at 621.

Reversed and remanded with instructions.

STARGEL and LABRIT, JJ., Concur.

Opinion subject to revision prior to official publication.