NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

SECOND DISTRICT

HEATHER DONENE ROBALDO, Appellant, v. STATE OF FLORIDA, Appellee.	)	Case No. 2D02-4021

Opinion filed July 30, 2004.

Appeal from the Circuit Court for Hillsborough County; Ronald N. Ficarrotta, Judge.

James Marion Moorman, Public Defender, and Richard P. Albertine, Jr., Assistant Public Defender, Bartow, for Appellant.

Charles J. Crist, Jr., Attorney General, Tallahassee, and Danilo Cruz-Carino, Assistant Attorney General, Tampa, for Appellee.

PER CURIAM.

Heather Donene Robaldo appeals the revocation of her community control and argues that the State failed to prove that she willfully and substantially violated the

conditions of her community control. Because the State failed to present sufficient nonhearsay evidence to prove the violation upon which the revocation was based, we agree and reverse.

The State charged Robaldo with violating three conditions of her community control. At the conclusion of the State's case at the revocation hearing, the trial court dismissed two of the three violations charged. The remaining violation charged Ms. Robaldo with violating condition three of the conditions of her community control. This condition provided: "You will not change your residence or leave the county or state of your residence without first procuring the consent of your supervising officer."

Ms. Robaldo's approved residence was a church compound in Sun City Center. The person in charge of the compound was Reverend Chapin. Michael Cotignola, Ms. Robaldo's probation officer, testified that on the evening of June 6, 2002, he went to the compound and was told by Reverend Chapin that Ms. Robaldo had left the compound because she had tested positive for cocaine and was afraid that she would be jailed. Mr. Cotignola stood in the front living room area of the residence and did not observe Ms. Robaldo. Before leaving, Mr. Cotignola asked Reverend Chapin to tell Ms. Robaldo to call him or to visit him at the probation office. Mr. Cotignola testified further that he did not hear from Ms. Robaldo until she was arrested. Mr. Cotignola testified to making only one visit to the residence.

Ms. Robaldo testified on her own behalf and denied that she had changed her residence. She also testified that she continued to be in contact with Mr. Cotignola or his office in accordance with the conditions of her community control until she was

arrested. Although Reverend Chapin was present at the revocation hearing, neither the State nor the defense called him as a witness.

"In order to support the revocation of community control, the State must prove that the defendant's violations were willful and substantial." Davis v. State, 867 So. 2d 608, 610 (Fla. 2d DCA 2004); Brown v. State, 813 So. 2d 202, 203-04 (Fla. 2d DCA 2002). The State has the burden of proving by the greater weight of the evidence that the defendant's actions amounted to a willful and substantial violation of community control. See Roseboro v. State, 528 So. 2d 499, 500 (Fla. 2d DCA 1988). "Although hearsay is admissible in evidence at a probation revocation hearing, a revocation of probation may not be based solely upon hearsay evidence." Rowan v. State, 696 So. 2d 842, 843 (Fla. 2d DCA 1997). A revocation of probation or community control based on changing a residence without first obtaining the consent of the probation officer may be upheld if it is based on hearsay evidence coupled with some other nonhearsay evidence. See id.; see also Hartzog v. State, 816 So. 2d 774, 775-76 (Fla. 2d DCA 2002); Tornas v. State, 742 So. 2d 472, 473 (Fla. 2d DCA 1999); Cito v. State, 721 So. 2d 1192, 1192 (Fla. 2d DCA 1998); Garcia v. State, 701 So. 2d 607, 608 (Fla. 2d DCA 1997).

In this case, the State failed to present sufficient evidence to support the charge that Ms. Robaldo changed her approved residence without the consent of her probation officer. The State presented the hearsay testimony of Mr. Cotignola that Reverend Chapin had told him that Ms. Robaldo had left the residence. At the conclusion of the State's case, defense counsel moved to dismiss the charge concerning the violation of condition three on the ground that it was not supported by sufficient

nonhearsay evidence. Nevertheless, the State failed to move to reopen its case to call the hearsay declarant, Reverend Chapin, who was present at the hearing. Ms. Robaldo's absence from the residence on the occasion of Mr. Cotignola's single visit, without more, was insufficient to prove that she was no longer living there, even when coupled with hearsay evidence. Cf. Mosley v. State, 735 So. 2d 547 (Fla. 4th DCA 1999) (holding evidence sufficient to conclude that probationer had changed his residence without probation officer's permission where probation officer could not make contact with probationer after visiting residence numerous times and leaving several messages that were never answered).

For these reasons, we are compelled to conclude that the State failed to present sufficient evidence to support the order of revocation. Accordingly, we reverse the trial court's order revoking Ms. Robaldo's community control.

Reversed.

DAVIS, CANADY, and WALLACE, JJ., Concur.