

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

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

RANDALL PAUL HUTCHINS,)
)
 Appellant,)
)
 v.)
)
 STATE OF FLORIDA,)
)
 Appellee.)
 _____)

Case No. 2D04-883

Opinion filed November 24, 2004.

Appeal from the Circuit Court for
Highlands County; J. David Langford,
Judge.

James Marion Moorman, Public
Defender, and Judith Ellis, Assistant
Public Defender, for Appellant.

Charles J. Crist, Jr., Attorney General,
Tallahassee, and John M. Klawikofsky,
Assistant Attorney General, Tampa, for
Appellee.

ALTENBERND, Chief Judge.

Randall Paul Hutchins appeals an order revoking his probation and
sentencing him to seven years in prison. There was competent, substantial evidence
that Mr. Hutchins violated condition 3 of his order of probation twice, violated condition 7

twice, and violated condition 42 once. However, the evidence did not support the trial court's finding that Mr. Hutchins had willfully violated condition 38, which directed, "You will at your own expense, participate and successfully complete a sex offender program with therapists specifically trained to treat sex offenders." See Mitchell v. State, 871 So. 2d 1040, 1041-42 (Fla. 2d DCA 2004); Butler v. State, 775 So. 2d 320 (Fla. 2d DCA 2000); Salzano v. State, 664 So. 2d 23 (Fla. 2d DCA 1995).

Because the record clearly reflects that the trial court would have revoked Mr. Hutchins' probation and imposed the seven-year sentence based upon the three supported violations, we affirm the order revoking Mr. Hutchins' probation but remand for the trial court to strike from the order any reference to Mr. Hutchins' violating condition 38.

Affirmed in part and remanded.

FULMER and VILLANTI, JJ., Concur.