

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

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

MARCUS SANDERS,)
)
 Appellant,)
)
 v.)
)
 STATE OF FLORIDA,)
)
 Appellee.)
_____)

Case No. 2D07-1241

Opinion filed May 8, 2009.

Appeal from the Circuit Court for Lee
County; Edward J. Volz, Jr., Judge.

James Marion Moorman, Public Defender,
and Richard J. Sanders, Assistant Public
Defender, Bartow, for Appellant.

Bill McCollum, Attorney General,
Tallahassee, and Ronald Napolitano,
Assistant Attorney General, Tampa,
for Appellee.

DAVIS, Judge.

Marcus Sanders challenges the amended judgments and sentences
entered in case numbers 00-CF-614, 00-CF-1964, and 00-CF-2894 after his probation
was revoked on December 8, 2006. Because Sanders already had fully completed his

original probationary sentences on his third-degree felony offenses in case numbers 00-CF-614, 00-CF-1964, and 00-CF-2894, we reverse the orders revoking his probation as to those counts. We affirm the revocation of Sanders' probation and the sentences he received for his second-degree felony offenses in circuit court case number 00-CF-2894.

Sanders originally pleaded no contest to five counts in three separate cases and was sentenced on January 23, 2003. Sanders was sentenced to three years' prison on all counts to run concurrently and to be followed by probation, the length of which varied by the degree of each offense. The criminal mischief and attempted burglary counts in case numbers 00-CF-614 and 00-CF-1964, as well as the aggravated assault count in case number 00-CF-2894, were all third-degree felonies for which Sanders received two-year terms of probation. Sanders received three-year terms of probation on the second-degree counts of robbery and aggravated battery in case number 00-CF-2894.

Although he repeatedly violated the conditions of supervision, the trial court reinstated his probation after each violation. After Sanders completed the two-year probationary terms he was serving on his third-degree felonies, but before he had completed his remaining probation on the second-degree felonies, he was again alleged to have violated conditions of supervision. On December 8, 2006, the trial court revoked his probation in all cases and sentenced him to concurrent 108-month (nine-year) terms on all five counts, which was a slight downward departure from his lowest permissible sentence of 111.6 months under the criminal punishment code scoresheet that was prepared.

The State has conceded that Sanders already had completed the originally imposed two-year term of probation for all of his third-degree felonies prior to the filing of the most recent affidavit of violation of probation. Pursuant to section 948.06, Florida Statutes (1997), the trial court only had jurisdiction to revoke his probation and to sentence him on the second-degree offenses in case number 00-CF-2894—those offenses for which he was still serving probation at the time of the alleged violation. "[U]pon the expiration of the probationary . . . period, 'a court is divested of all jurisdiction over the person of the probationer unless in the meantime the processes of the court have been set in motion for revocation or modification of the probation'" Stapler v. State, 939 So. 2d 1092, 1093 (Fla. 5th DCA 2006) (quoting State v. Hall, 641 So. 2d 403, 404 (Fla. 1994)).

Accordingly, we affirm the revocation of Sanders' probation and sentences for the counts of second-degree robbery and aggravated battery in case 00-CF-2894. On the remaining counts and sentences, we reverse and remand with instructions for the trial court to strike the orders of revocation of probation and vacate Sanders' sentences in cases 00-CF-614 and 00-CF-1964 and to strike the order of revocation of probation and vacate the sentence for the third-degree aggravated assault count in case number 00-CF-2894.

Affirmed in part; reversed in part; remanded with instructions.

NORTHCUTT, C.J., and VILLANTI, J., Concur.