

Third District Court of Appeal

State of Florida

Opinion filed July 29, 2020.
Not final until disposition of timely filed motion for rehearing.

No. 3D19-542
Lower Tribunal No. 13-23892

Shantel A. Brown,
Appellant,

vs.

The State of Florida,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Milton Hirsch,
Judge.

J. Rafael Rodriguez, Special Assistant Public Defender, for appellant.

Ashley Moody, Attorney General, and Kseniya Smychkouskaya, Assistant
Attorney General, for appellee.

Before **SALTER, MILLER, and LOBREE, JJ.**

PER CURIAM.

Upon consideration, we hereby reverse in part the trial court's determination
that Appellant violated her community control/probation by possessing marijuana

and resisting arrest, as the record fails to support the allegations. The arrest report and Appellant's testimony, without more, are insufficient to prove the violations. See Hernandez v. State, 33 So. 3d 143, 144 (Fla. 2d DCA 2010). While Appellant's testimony corroborated the time and place of the arrest, Appellant denied the basis for the arrest. Accordingly, we reverse and remand the case with instructions to the trial court to remove the findings that Appellant violated her community control/probation by committing the aforementioned offenses.

Appellant's appeal from the trial court's order denying her motion to vacate¹ is hereby dismissed as one taken from a nonfinal, non-appealable order. The trial court denied Appellant's motion without prejudice and afforded her sixty days to file an amended motion. Instead of filing an amended motion, Appellant chose to appeal the order. Therefore, we lack jurisdiction and dismiss this portion of the appeal without prejudice to the filing of a timely amended motion for postconviction relief in the trial court within 60 days of the date of the issuance of this opinion. See Fla. R. Crim. P. 3.850(k); Moore v. State, 281 So. 3d 553, 554 (Fla. 3d DCA 2019).

The trial court's remaining rulings are otherwise affirmed.

Affirmed in part; reversed and remanded in part; dismissed in part.

¹ We express no opinion on the validity or substance of the motion to vacate.