

# **Third District Court of Appeal**

## **State of Florida**

Opinion filed September 30, 2020.  
Not final until disposition of timely filed motion for rehearing.

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No. 3D20-0283  
Lower Tribunal No. 10-31879

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**Israel Chirino,**  
Appellant,

vs.

**The State of Florida,**  
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Andrea R. Wolfson, Judge.

Carlos J. Martinez, Public Defender, and Robert Kalter, Assistant Public Defender, for appellant.

Ashley Moody, Attorney General, and Michael W. Mervine, Assistant Attorney General, for appellee.

Before LOGUE, HENDON and BOKOR, JJ.

PER CURIAM.

Israel Chirino appeals the circuit court's order revoking his probation. He argues that the court's written order of revocation is inconsistent with the court's oral pronouncement. See Salvatierra v. State, 691 So. 2d 32 (Fla. 3d DCA 1997) ("A written order of probation revocation must conform to the court's oral pronouncement at a defendant's probation revocation hearing.").

The written order of revocation includes a violation of probation for drug possession based on a positive drug test. However, at the revocation of probation hearing, the State agreed it was not going forward with the drug possession allegation. The State concedes error. Nevertheless, as the State properly points out, Chirino did not preserve this argument with either a contemporaneous objection or a Florida Rule of Criminal Procedure 3.800 motion. See Burney v. State, 114 So. 3d 455 (Fla. 4th DCA 2013).

Accordingly, we affirm the circuit court's order of revocation of probation, but without prejudice to Chirino filing a legally sufficient rule 3.800 motion in the circuit court raising the above inconsistency in the written order.

Affirmed without prejudice.