

# Third District Court of Appeal

State of Florida, July Term, A.D. 2007

Opinion filed November 28, 2007.

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No. 3D06-2122  
Lower Tribunal No. 96-338

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**Louis Huard,**  
Appellant,

vs.

**The State of Florida,**  
Appellee.

An Appeal of a Final Order from the Circuit Court for Miami-Dade County,  
Ivan F. Fernandez, Judge.

Bennett H. Brummer, Public Defender, and Gwendolyn Powell Braswell,  
Assistant Public Defender, for appellant.

Bill McCollum, Attorney General, and Juliet S. Fattel, Assistant Attorney  
General, for appellee.

Before RAMIREZ, SHEPHERD, and CORTIÑAS, JJ.

*CONFESSION OF ERROR*

PER CURIAM.

Louis Huard was found to be in willful violation of his probation for failure to make the required restitution payments, which had been imposed as a condition of his probation. The State concedes that it failed to prove that Huard had the ability to pay and that the missed restitution payments were willful violations of probation. Because the uncontroverted evidence showed that Huard did not have the ability to pay the court-ordered restitution, the State confesses error insofar as the trial court found that Huard had willfully violated his probation. See Moore v. State, 724 So. 2d 117, 118 (Fla. 3d DCA 1998) (citing Hewett v. State, 613 So. 2d 1305 (Fla. 1993)); White v. State, 693 So. 2d 119 (Fla. 2d DCA 1997); Laing v. State, 622 So. 2d 560 (Fla. 3d DCA 1993). We agree.

Based on the State's confession of error, we reverse and remand the case for the purpose of vacating the trial court's order extending probation. The trial court should terminate the appellant's probation and issue a criminal order of restitution payable to the victim for the balance of the restitution owed.

Reversed and remanded with instructions.