

NOT FINAL UNTIL TIME EXPIRES  
TO FILE REHEARING MOTION  
AND, IF FILED, DISPOSED OF.

IN THE DISTRICT COURT OF APPEAL  
OF FLORIDA  
THIRD DISTRICT  
JULY TERM, A.D. 2003

NICHOLAS CRANZ,	**	
Appellant,	**	
vs.	**	CASE NO. 3D02-3105
THE STATE OF FLORIDA	**	LOWER TRIBUNAL NO. 99-287
Appellee.	**	

Opinion filed September 24, 2003.

An appeal from the Circuit Court for Monroe County, Florida,  
William R. Ptomey, Judge.

Bennett H. Brummer, Public Defender, and Bruce A. Rosenthal,  
Assistant Public Defender, for appellant.

Charles J. Crist, Jr., Attorney General, and Consuelo Maingot  
(Ft. Lauderdale), Assistant Attorney General, and Melissa Vaughan  
Rubin, Certified-Out-Of-State Practitioner, for appellee.

Before RAMIREZ and WELLS, JJ., and NESBITT, Senior Judge.

PER CURIAM.

In this case the defendant's community control was held to have  
been violated (1) for being briefly absent from his residence to  
retrieve a birthday present from his parked car for his son, and (2)

for being only a short distance away buying cigarettes. Defendant was otherwise complying with community control and all other special terms and conditions of his probation and the trial judge expressed his belief in the defendant's explanation for his absences from the home. The greater weight of the evidence did not show that the two acts should have been considered as a willful and substantial violation of the community control. McCray v. State, 754 So. 2d 776 (Fla. 3d DCA 2000); Dassau v. State, 731 So. 2d 86 (Fla. 3d DCA 1999). Inept or negligent conduct is insufficient to demonstrate willfulness. McCray, supra, at 778.

Accordingly, the revocation of defendant's community control is reversed.