

FILED: July 23, 2014

IN THE COURT OF APPEALS OF THE STATE OF OREGON

STATE OF OREGON,
Plaintiff-Respondent,

v.

BILLY DALE DAVIS,
Defendant-Appellant.

Douglas County Circuit Court
12CR0938FE

A152538

Frances Elaine Burge, Judge.

Submitted on June 24, 2014.

Peter Gartlan, Chief Defender, and Lindsey Burrows, Deputy Public Defender, Office of Public Defense Services, filed the brief for appellant.

Ellen F. Rosenblum, Attorney General, Anna M. Joyce, Solicitor General, and Sarah M. Villanueva, Assistant Attorney General, filed the brief for respondent.

Before Hadlock, Presiding Judge, and Tookey, Judge, and De Muniz, Senior Judge.

PER CURIAM

Vacated and remanded.

1 PER CURIAM

2 Defendant appeals a judgment revoking his probation. The trial court
3 determined that defendant had violated his probation by changing his residence without
4 permission and by associating with a known drug user. On appeal, defendant asserts that
5 there was legally insufficient evidence of either probation violation. *See State v. Perez,*
6 *122 Or App 385, 388, 857 P2d 893 (1993)* (court reviews a trial court's decision to
7 revoke probation for abuse of discretion); *State v. Winters, 44 Or App 9, 12, 605 P2d 293*
8 *(1980)* (a trial court abuses its discretion when it revokes probation based on insufficient
9 evidence). We reject without discussion defendant's contention regarding the change of
10 residence. With respect to the other basis for the probation revocation, the state concedes
11 that there was insufficient evidence that defendant had violated his probation by
12 associating with a known drug user. Accordingly, the state asserts "this court should
13 vacate the judgment and remand for further proceedings." We agree, and accept the
14 state's concession. *See State v. Milnes, 256 Or App 701, 710, 301 P3d 966 (2013)*
15 (reversing and remanding probation revocation judgment where one ground for
16 revocation was incorrect and the trial court had not indicated whether it would have
17 revoked the defendant's probation in the absence of that ground).

18 Vacated and remanded.