

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA

APPELLATE DIVISION (CRIMINAL): AC  
CASE NO.: 502016AP900296AXXXMB  
L.T. NO.: 502014CT020882AXXXMB

WILLIAM KENNETH MEDLOCK, III,  
Appellant,

v.

STATE OF FLORIDA,  
Appellee.

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Opinion filed: **MAR 05 2018**

Appeal from the County Court in and for Palm Beach County,  
Judge Leonard Hanser.

For Appellant: Patrick B. Burke, Esq.  
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PER CURIAM.

Appellant challenges the trial court's order revoking his probation and the resulting judgment and sentence. Appellant argues that because the State failed to allege that he had absconded from probation prior to the term's expiration, his probation term was not tolled and the trial court lacked subject-matter jurisdiction over his violation of probation proceeding. *See Williams v. State*, 202 So. 3d 917 (Fla. 4th DCA 2016). Under the facts of this case, we agree.

“It is axiomatic that ‘[o]nce a term of probation has expired, a court lacks jurisdiction to entertain an application for revocation of probation based on a violation which occurred during the probation period unless, during the term of probation, appropriate steps were taken to revoke or modify probation.’” *Shenfeld v. State*, 14 So. 3d 1021, 1023 (Fla. 4th DCA 2009) (alteration in original) (quoting *Clark v. State*, 402 So. 2d 43, 44 (Fla. 4th DCA 1981)). Although absconding from probation serves as an independent basis for tolling a probation term, *Williams*, 202 So. 3d at 921, it is well established that a probation term is not tolled unless all of the conditions for tolling have been satisfied *prior* to the term’s expiration. See *Mobley v. State*, 197 So. 3d 572, 574 (Fla. 4th DCA 2016); *Shenfeld*, 14 So. 3d at 24; *Jean-Gilles v. State*, 921 So. 2d 860, 862 (Fla. 4th DCA 2006). It is also well established that a court cannot revoke a defendant’s probation for conduct not charged in the affidavit of violation of probation. *Davis v. State*, 891 So. 2d 1186, 1187 (Fla. 4th DCA 2005) (citing *State v. Anderson*, 537 So. 2d 1373 (Fla. 1989)). Rather, “an affidavit upon which a revocation is based must set forth the basic facts of the alleged violations.” *State v. Capeletti*, 216 So. 3d 769, 771 (Fla. 4th DCA 2017); *Bourne v. State*, 869 So. 2d 606, 607 (Fla. 1st DCA 2004).

Together, we take these rules to mean that in order to toll a probation term on the basis of absconding, an affidavit of violation of probation must both timely and sufficiently allege that the probationer has absconded from probation. Under *Williams*, an affidavit of violation of probation that does not explicitly allege absconding may still sufficiently allege a prima facie case of absconding where the affidavit alleges (1) the defendant has changed residences without consent, and (2) the defendant’s current whereabouts are unknown. *Id.* at 921. Here, the timely filed affidavits of violation of probation allege neither of these facts, nor do they explicitly allege Appellant absconded.

In this case, two affidavits alleging violations of probation were filed prior to the expiration of Appellant's probation,<sup>1</sup> each of which alleged in pertinent part:

Violation of Condition of Probation #2 by failure to report to Probation on 12/22/14 and on 1/7/15 as instructed by Probation Officer (The defendant stopped reporting).

Although a probationer who has absconded has undoubtedly "stopped reporting," we cannot say that the opposite will always hold true. In other words, while the phrase "stopped reporting" could indicate that Appellant had absconded, we find that without more detail, the language of the affidavits filed here merely points to Appellant's failure to report to Probation, which is a separate and distinct violation.<sup>2</sup> Because the State did not sufficiently allege a prima facie case of absconding in either of the timely filed affidavits of violation, Appellant's probationary period was not tolled, and the trial court was without jurisdiction to revoke Appellant's probation.

Accordingly, we reverse the order revoking probation and any resulting judgment and sentence entered thereafter, and remand this case to the trial court with instructions to discharge Appellant.

**REVERSED and REMANDED.**

JOHNSON, FEUER and KASTRENAKES, JJ., concur.

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<sup>1</sup> A third affidavit that explicitly alleged Appellant had absconded was filed after Appellant's probation had expired, but as stated above, a term of probation can only be tolled when the requirements for tolling have been satisfied *prior* to the term's expiration. See *Shenfeld v. State*, 14 So. 3d 1021, 1024 (2009) (citing *Jean-Gilles v. State*, 921 So. 2d 860, 862 (Fla. 4th DCA 2006)).

<sup>2</sup> We note that none of the affidavits alleged Appellant violated the first condition of his probation, which stated, "You will not change your residence or employment or leave the county of your residence without procuring the consent of your Probation Supervisor."

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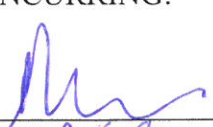
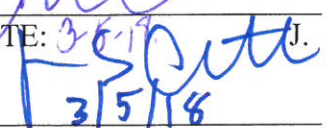
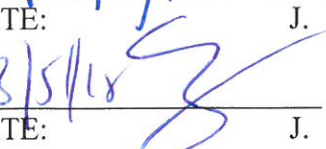
Appealed: December 6, 2016

DATE OF PANEL: JANUARY 22, 2018

PANEL JUDGES: JOHNSON, FEUER, KASTRENAKES

AFFIRMED/REVERSED/OTHER: REVERSED

DECISION BY: PER CURIAM

CONCURRING:	)	DISSENTING:	)	CONCURRING SPECIALLY:	)
	)	With/Without Opinion	)	With/Without Opinion	)
	)		)		)
DATE: <u>3/5/18</u> J.	)		)		)
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