

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

DARRYL Q. HARRIS

Appellant,

Appellate Division (Criminal)

Case No.: 502008AP900032AXXXMB

Co. Court Case No.: 502008MM002853AXXXMB

v.

STATE OF FLORIDA,

Appellee.

Opinion filed: December 18, 2008

Appeal from Sheree Cunningham,
County Court in and for Palm Beach County.

For Appellant, Carey Haughwout, James W. McIntire, Office of the Public Defender, 421 Third Street, West Palm Beach, FL 33401

For Appellee, Michelle Zieba, Office of the State Attorney, 401 N. Dixie Highway, West Palm Beach, FL 33401.

PER CURIAM.

Appellant Darryl Q. Harris appeals a trial court order finding him in violation of a plea and pass agreement and sentencing him to nine months incarceration with twenty-three days credit for time served. The trial court imposed the downside of the plea and pass agreement based upon Harris' failure to enroll in a batterer's intervention program coupled with a new arrest for Resisting Arrest Without Violence. We reverse.

The closest situation analogous to the finding of a violation of a plea and pass agreement is the revocation of probation based upon violations of probation conditions. *Dale v. State*, 9 Fla. L. Weekly Supp. 227b (Fla. 15th Jud. Cir. Feb. 14, 2002). At probation violation hearings, the strict rules of evidence are not required to be observed. *Bernhardt v. State*, 288 So. 2d 490, 500 (Fla. 1974). However, hearsay may not form the only evidentiary support for the facts leading to a finding of a violation. *Johnson v. State*, 962 So.2d 394, 396 (Fla. 2d DCA 2007). Here, the only evidence of Harris' violation of the "no new arrests" condition of the plea and pass agreement was the probable cause affidavit alleging Resisting Arrest Without Violence. Because the probable cause affidavit was hearsay, it could not provide the sole basis for the trial court's determination that Harris violated the "no new arrests" condition of the plea and pass agreement. *Davis v. State*, 831 So. 2d 792, 793 (Fla. 5th DCA 2002).

Also, in this case, the trial court erred in imposing the downside of the plea and pass agreement solely on proof that Harris had been arrested, without evidence that Harris committed the underlying act. *J.F. v. State*, 889 So. 2d 130, 132 (Fla. 4th DCA 2004); *see also In the Interest of L.S.*, 553 So. 2d 345, 345 (Fla. 4th DCA 1989) (reversing the trial court's revocation of the defendant's community control, holding, "Mere evidence of an arrest is insufficient to violate a juvenile's community control"); *Purvis v. State*, 397 So. 2d 746, 747 (Fla. 5th DCA 1981) (finding that "[e]vidence of probationer's arrest, without more, will not support a revocation of probation" where the defendant allegedly violated the probation condition that he "live and remain at liberty without violating any law").

Additionally, the trial court erred in finding that Harris willfully violated the plea and pass agreement by failing to enroll in the batterer's intervention program. Harris was incarcerated during the last twenty-two days of his enrollment period; therefore, the record does not support the finding that Harris' failure to enroll in the program was willful. *Muthra v. State*, 777 So. 2d 1067, 1068 (Fla. 3d DCA 2001).

Reversed and remanded.

BURTON, BROWN, and MILLER, JJ. concur.