

577 So.2d 640  
District Court of Appeal of Florida,  
Fourth District.

Mark DURDEN, Appellant,  
v.  
STATE of Florida, Appellee.

No. 90-1239.  
|  
March 27, 1991.

### Synopsis

Defendant was found to have violated terms and conditions of his community control, in the Circuit Court, Broward County, M. Daniel Futch, Jr., J., and defendant appealed. The District Court of Appeal, Downey, J., held that: (1) trial court could not rely upon grounds for finding violation that defendant had moved his address without permission and had not paid cost of supervision, where proof adduced to support grounds was solely hearsay; (2) possession of cocaine which occurred after sentence to community control and probation had expired could not be valid ground for violation; and (3) remand was necessary to determine whether sole remaining ground, that defendant had failed to report, warranted revocation of community control and, if so, whether same sentence was warranted.

Affirmed in part, reversed in part, and remanded with directions.

West Headnotes (3)

- [1] **Sentencing and Punishment** 🔑 Sufficiency  
Grounds that defendant had moved his residence without permission and had not paid cost of supervision could not be relied upon to support order finding that defendant had violated terms and conditions of his community control, where proof adduced to support grounds was solely hearsay.

2 Cases that cite this headnote

- [2] **Sentencing and Punishment** 🔑 Defenses and Objections

Defendant's alleged possession of cocaine after his sentence to community control and probation had expired could not be valid ground for finding violation of terms and conditions of community control.

1 Cases that cite this headnote

- [3] **Criminal Law** 🔑 Sentence

Remand was necessary to determine whether revocation of community control was appropriate and, if so, whether same sentence was warranted, where trial court had only relied upon one valid ground, that defendant had failed to report, and had relied on three invalid grounds, that defendant had moved his residence without permission, had not paid cost of supervision, and was found in possession of cocaine.

1 Cases that cite this headnote

### Attorneys and Law Firms

\*640 Joseph R. Dawson of Law Offices of Joseph R. Dawson, Fort Lauderdale, for appellant.

Robert A. Butterworth, Atty. Gen., Tallahassee, and Joseph A. Tringali, Asst. Atty. Gen., West Palm Beach, for appellee.

### Opinion

\*641 DOWNEY, Judge.

This is an appeal from a final order finding appellant had violated the terms and conditions of his community control in four respects: 1) he had moved his residence without permission so that his whereabouts were unknown, 2) he failed to report, 3) he had not paid the cost of supervision, and 4) during a routine traffic stop and subsequent search of his vehicle, he was found in possession of cocaine.

[1] [2] At the hearing on the merits of said alleged violations, the evidence reflects that appellant admitted not reporting, but stated that the community control officer was threatening to "violate him" unless he furnished the officer

with drugs. Grounds one and three above were proven by hearsay evidence only. The episode involved in ground four occurred after the sentence to community control and probation had expired. Thus, it could not be a valid ground for violation. *McPherson v. State*, 530 So.2d 1095 (Fla. 1st DCA 1988). Neither can grounds one and three be relied upon because the proof adduced to support them was solely hearsay. *Id.*

[3] As we held in *Davis v. State*, 474 So.2d 1246 (Fla. 4th DCA 1985), this leaves us in doubt as to whether the trial court would have revoked appellant's community control for the one violation and, if so, whether the sentence would have

been the same. Accordingly, we affirm in part and reverse in part, and remand to the trial court with directions to eliminate grounds one, three, and four from the court's order. We request the trial court to reconsider the matter in the light of this opinion and resentence appellant as he deems proper, which may include the same sentence previously given if he be so disposed.

GLICKSTEIN and GARRETT, JJ., concur.

**All Citations**

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