

IN THE DISTRICT COURT OF APPEAL  
FIRST DISTRICT, STATE OF FLORIDA

LYDIA ANN RUSH,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

---

NOT FINAL UNTIL TIME EXPIRES TO  
FILE MOTION FOR REHEARING AND  
DISPOSITION THEREOF IF FILED

CASE NO. 1D15-4631 and 1D15-4791  
(Consolidated)

Opinion filed August 12, 2016.

An appeal from the Circuit Court for Okaloosa County.  
William F. Stone, Judge.

Michael Ufferman of Michael Ufferman Law Firm, P.A., Tallahassee, for Appellant.

Pamela Jo Bondi, Attorney General, Jennifer J. Moore, Assistant Attorney General,  
Tallahassee, for Appellee.

PER CURIAM.

Appellant Lydia Ann Rush appeals from the trial court's order revoking her probation and imposing a prison sentence following the court's finding that she willfully and substantially violated a condition of her probation. Appellant argues that the evidence does not support a finding that her violation was willful, and the record

supports her argument. Furthermore, the State concedes error. See State v. Carter, 835 So. 2d 259, 261 (Fla. 2002) (“Trial courts must consider each violation on a case-by-case basis for a determination of whether, under the facts and circumstances, a particular violation is willful and substantial and is supported by the greater weight of the evidence.”); Van Wagner v. State, 677 So. 2d 314, 317 (Fla. 1st DCA 1996) (“Where a probationer makes reasonable efforts to comply with a condition of probation, violation of the condition cannot be deemed ‘willful.’”). Accordingly, we reverse and remand for Appellant’s probation to be reinstated.

B.L. THOMAS, ROWE, and WINSOR, JJ., CONCUR.