

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

JHAROD KELLY,

Appellant,

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

v.

CASE NO. 1D09-6124

STATE OF FLORIDA,

Appellee.

Opinion filed June 21, 2010.

An appeal from the Circuit Court for Duval County.
Elizabeth A. Senterfitt, Judge.

Nancy A. Daniels, Public Defendant, and Joel Arnold, Assistant Public Defendant,
Tallahassee, for Appellant.

Bill McCollum, Attorney General, Tallahassee, for Appellee.

PER CURIAM.

Because the State did not present any evidence as to violation of Condition 12 of appellant's probation, the order revoking probation should be modified on remand to correct the finding of violation as to that condition. We affirm the violation and sentence, however, because the State proved willful and substantial

violation of Condition 4 (“live . . . without violating any law”), and the record is clear that the trial court based its order of revocation and its sentence upon the new offense of home invasion robbery, as set out in Condition 4.

AFFIRMED, as modified.

KAHN, ROWE, and MARSTILLER, JJ., CONCUR.