

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

JANUARY TERM 2009

RASHEAN LYNN,

Appellant,

v.

Case No. 5D08-744

STATE OF FLORIDA,

Appellee.

/

Opinion filed February 13, 2009

Appeal from the Circuit Court for
Brevard County,
Charles M. Harris, Senior Judge.

James S. Purdy, Public Defender, and
Nancy Ryan, Assistant Public Defender,
Daytona Beach, for Appellant.

Bill McCollum, Attorney General,
Tallahassee, and Allison Leigh Morris,
Assistant Attorney General, Daytona
Beach, for Appellee.

PER CURIAM.

Rashean Lynn appeals the trial court's order revoking his probation and sentencing him to fifteen years in prison for his earlier conviction of trafficking in cocaine. The trial court concluded that Lynn violated his probation by committing a new law violation (or several of them), and by changing his residence without first procuring the consent of his probation officer. As to the former violation, we affirm without further

discussion. As to the latter, we must reverse as no violation regarding a change of residence condition was alleged. Revoking probation for conduct not charged is fundamental error. Smith v. State, 738 So. 2d 433, 435 (Fla. 1st DCA 1999).

We affirm the revocation of Lynn's probation and the sentence imposed. We remand with directions to enter an order of revocation of probation deleting any reference to a condition three (change of residence) violation, as no such allegation was made against Lynn.

AFFIRMED IN PART; and REMANDED.

PALMER, C.J., SAWAYA and ORFINGER, JJ., concur.