

**IN THE TENTH JUDICIAL CIRCUIT
FOR HARDEE COUNTY, FLORIDA**

County Case No.: MM00-00738A-WUV

Appeal No.: 252001AP000240XXXXXX

CYNTHIA HOWELL,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

OPINION OF THE COURT

This is an appeal from the county court of Hardee County, Judge Marcus J. Ezelle presiding. This court has jurisdiction. Fla. R. App. P. 9.030(c). The ruling of the county court is reversed.

On November 14, 2000, the Appellant was charged with domestic battery in violation of §784.03, Florida Statutes (2000) and was placed on probation for one year. On April 11, 2001, a violation of probation affidavit was filed against Appellant, claiming that she failed to pay fees, failed to attend domestic violence classes, and for committing a new law violation. After a violation of probation hearing was held on June 14, 2001, the trial court violated Appellant for failure to complete domestic violence classes. Appellant was sentenced to 270 days in county jail, with credit for time served, as well as 4 additional days credit. A notice of appeal was timely filed on July 10, 2001.

The Appellee declined to file an answer brief; therefore the Court will proceed without the benefit of Appellee's argument. First, Appellant contends that the trial court did not have jurisdiction to convict her because the only charging document filed was an arrest affidavit, which is not an acceptable charging document to confer jurisdiction upon the trial court. Second, Appellant argues that the trial court erred in violating her before the time to complete her conditions of probation ran.

Appellant first argues that pursuant to Fla. R. Crim. P. 3.140(a), the only appropriate charging documents for misdemeanor prosecutions are informations and notices to appear. Appellant further cites to a recent ruling where the Court held that a trial court has no jurisdiction where only an arrest report/affidavit was filed. Indema v. State, DD-2 (Fla. 10th Cir. Ct. Jan. 22, 2002). In light of this recent ruling, this court has no recourse but to reverse and remand this cause to the trial court for the purpose of discharging the Appellant on the basis of lack of jurisdiction. As the Court has granted relief to Appellant, it declines to reach the merits of the second issue.

For the foregoing reasons, it is ORDERED that the ruling of the county court is REVERSED AND REMANDED.

ORDERED July 2002

CHARLES B. CURRY, Chief Judge

Copies furnished to:

Maureen E. Mulcahy, APD

John Kromholz, ASA, Hardee County