NOT FINAL UNTIL TIME EXPIRES FOR REHEARING AND, IF FILED, DETERMINED

**IN THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA IN AND FOR PASCO COUNTY, FLORIDA
APPELLATE DIVISION**

STATE OF FLORIDA,
     Appellant,   **UCN:**   **512016CF006230A000WS**
                                  Appeal No.: CRC1606230CFAWS
v.   **L.T. No.:**   **CTC14-3949MMAWS**

ROBERT EDWARD ADAMS,
     Appellee.
_____/

On appeal from Pasco County Court,
Honorable Debra Roberts,

Office of the State Attorney,
for Appellant,

Geoffrey Cox, Esq.,
for Appellee.

ORDER AND OPINION

The trial court correctly followed binding precedent, granting Appellee's Motion to Dismiss Violation and Terminate Probation. The order of the trial court is affirmed.

STATEMENT OF THE CASE AND FACTS

Appellant appeals the trial court's order dismissing Appellee's violation of probation. On January 15, 2015, Appellee entered a plea of *nolo contendere* to the charge of petit theft. Adjudication was withheld, and Appellee was sentenced to twelve months' probation, beginning the same day. Subsequently, Appellee is alleged to have violated the terms and conditions of his probation.[1] Based upon the alleged failures to comply with the terms of his probation, an affidavit of violation of probation was filed on December 21, 2015, and a warrant for arrest was issued on January 4, 2016. The affidavit did not allege that Appellee committed a new crime.

Appellee filed a motion to dismiss the violation of probation based upon the recent Fourth District Court of Appeal ruling in *Mobley v. State*, 197 So. 3d 572 (Fla. 4th DCA

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[1] Specifically, Appellee is purported to have failed to complete the following: report for scheduled appointments with probation; pay cost of supervision fees; pay monthly on court costs and fines; pay the Public Defender fee.

2016), *rev. denied*, No. SC16-936, (Fla. June 6, 2016). The trial court, relying on the decision, ruled in Appellee's favor. This timely appeal followed.

STANDARD OF REVIEW

"Whether a court has subject matter jurisdiction is a question of law reviewed *de novo*." *Sanchez v. Fernandez*, 915 So. 2d 192, 192 (Fla. 4th DCA 2005). "It is axiomatic that '[o]nce a term of probation has expired, a court lacks jurisdiction to entertain an application for revocation of probation based on a violation which occurred during the probation period unless, during the term of probation, appropriate steps were taken to revoke or modify probation.'" *Mobley*, 197 So. 3d at 574. (quoting *Shenfeld v. State*, 14 So. 3d 1021, 1023 (Fla. 4th DCA 2009)).

LAW AND ANALYSIS

Once a probationary period has expired, a court lacks jurisdiction to hear a revocation proceeding unless the probationary period was tolled. *Id.* at 1021. The probationary period may be tolled only when certain criteria are met. Section 948.06(1)(f), Florida Statutes provides in relevant part:

> Upon the filing of an affidavit alleging a violation of probation or community control and following issuance of a warrant under s. 901.02, a warrantless arrest under this section, or a notice to appear under this section, the probationary period is tolled until the court enters a ruling on the violation.

§ 948.06, Fla. Stat. (2016).

Appellant argues that the probationary period was properly tolled prior to the violation of probation proceeding because of the issuance of an affidavit alleging a violation of probation and the filing of an arrest warrant. However, the *Mobley* decision further interprets Section 948.06, Florida Statutes. In *Mobley*, the Appellant was placed on eighteen months' probation, expiring on September 7, 2012. *Mobley*, 197 So. 3d at 573. On August 9, 2012, a probation officer filed affidavits alleging failure to fulfill financial obligations, and the trial court issued a warrant on the same day. *Id.* On September 27, 2012, the trial court extended the Appellant's probation, and later, had his probation revoked. *Id.* The *Mobley* court unanimously held that the extension was improper, and that section 948.06 was "very specific" as to the requirement that the warrant be used pursuant to section 901.02:

Section 948.06(1)(f) is clear that a warrant under section 901.02 is required in order for the probationary period to be tolled (except when one of the other two alternatives are applicable, as is not the case here). Section 901.02 in turn requires that the warrant be for a "crime." Here, the warrants issued were for violations of probation based on the failure to make restitution payments and a payment for drug testing. These are not "crimes." The warrants were therefore not issued under section 901.02, and Appellant's probation was never tolled.

Id. at 574.

The sole issue at bar can be reduced to whether or not the Fourth District's decision in *Mobley* controls. Appellee correctly argues that the decision is binding. "[I]n the absence of inter-district conflict, district court decisions bind all Florida trial courts." *Pardo v. State*, 596 So. 2d 665, 666 (Fla. 1980). There is a "judicially imposed requirement that circuit [courts] must abide by precedent from another district court of appeal if no precedent exists from its own district." *Nader v. Florida Dept. of Highway Safety and Motor Vehicles*, 87 So. 3d 712, 724 (Fla. 2012). In the absence of case law from the other Courts of Appeal, *Mobley* is controlling precedent on all lower courts. Thus, the trial court was bound by it, and, regardless of whether or not this Court agrees with the ruling in *Mobley*, we too are bound by the decision.

CONCLUSION

The trial court correctly followed binding precedent from the Fourth District's decision in *Mobley*. Accordingly, the trial court's order dismissing Appellee's violation of probation is affirmed.

It is ORDERED AND ADJUDGED that the order of the trial court is hereby AFFIRMED.

DONE AND ORDERED in Chambers at New Port Richey, Pasco County, Florida on this _____ day of March, 2017.

Original Order entered on March 28, 2017, by Circuit Judges Daniel D. Diskey, Linda Babb, and Shawn Crane.

Copies to:

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Office of the State Attorney

Honorable Debra Roberts