

**IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
IN AND FOR BREVARD COUNTY, FLORIDA.**

**STATE OF FLORIDA,
Plaintiff,**

CASE NO.: 05-2015-CF-039871-AXXX-XX

vs.

**DANA LYNN LOYD,
Defendant.**

_____ /

**MOTION TO SET ASIDE VIOLATION OF PROBATION ORDERED
BY TRIAL JUDGE IN EX PARTE DIRECTIVE TO
SUPERVISORY COMMUNITY CONTROL OFFICER**

COMES NOW, the Defendant, DANA LYNN LOYD, by and through the undersigned attorney, and hereby moves this Honorable Court to set aside the Violation of Probation which was ordered by Judge Robin C. Lemonidis in an ex parte directive to Supervisory Community Control officer Margo Sloan. As grounds therefor:

1. Community Control Officer Margo Sloan testified under oath at Deposition on October 18, 2019, that she became aware of a purported technical violation on December 20, 2017.

2. Ms. Sloan testified that she sent a letter to then-presiding Judge Robin C. Lemonidis on December 21, 2017, in which she outlined the alleged violation but concluded that "This officer believes that the offender has *not* violated her supervision...." (Emphasis added).

3. Ms. Sloan testified that Judge Lemonidis instructed her to "process a violation" (notwithstanding the position of the Community Control officer), via a phone call from Judge Lemonidis' Judicial Assistant.

4. Ms. Sloan complied with Judge Lemonidis' directive on December 29, 2017, in contravention of her own analysis that Ms. Loyd "has not violated her supervision."

5. The Violation of Probation was therefore generated directly from the trial judge, NOT the Office of Probation, which is assigned that duty in accordance with Florida Statute 948.06(1)(c): "If a probationer or offender on community control commits a technical violation,

the **probation officer shall determine** whether the probationer or offender on community control is eligible for the alternative sanctioning program under subsection (9). If **the probation officer determines** that the probationer or offender on community control is eligible, the probation officer may proceed with the alternative sanctioning program in lieu of filing an affidavit of probation with the court." (Emphases added.) In the present case, the probation officer determined that **no violation existed at all**, yet she was overruled by the trial judge in an ex parte directive!

6. The Fourth District Court of Appeals (*Mitchell v. State*, 642 So.2d 1108 (1994)) has commented that "We condemn in the strongest terms the practice, if it is a practice, of trial judges meeting with probation or community control officers on an ex parte basis to discuss incipient violation charges and possible dispositions. The role of a sentencing judge is to impose the sentence, not to supervise the executive branch authorities in their execution of it..."

WHEREFORE, this Honorable Court is most respectfully urged to set aside the Violation of Probation.

I HEREBY CERTIFY a true and correct copy of the foregoing has been forwarded by e-portal to the Office of the State Attorney, this 8th day of November, 2019.

s//Michael Bross//
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