DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

MASCHELLE PUGH,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D2025-2916

[November 12, 2026]

Appeal from the Circuit Court for the Nineteenth Judicial Circuit, Martin County; Michael J. McNicholas, Judge; L.T. Case No. 432025MM001532MMAXMX.

Daniel Eisinger, Public Defender, and Devin Johnson, Assistant Public Defender, West Palm Beach, for appellant.

James Uthmeier, Attorney General, Tallahassee, and Sorraya M. Solages-Jones, Senior Assistant Attorney General, West Palm Beach, for appellee.

KLINGENSMITH, J.

Appellant Maschelle Pugh appeals her conviction for indirect criminal contempt for failing to comply with court-ordered timesharing. The order to show cause incorporated her former husband's motion for contempt and an emergency motion for a child pickup order. One of the motions was sworn while the other was unsworn. Here, the acts supporting Appellant's conviction were alleged only in the unsworn motion. Because the contempt proceedings did not comply with Florida Rule of Criminal Procedure 3.840(a), we reverse and remand without prejudice.

Appellant and her former husband share two children. In October 2024, the trial court entered a timesharing order. Three months later, a January 2025 omnibus order addressing timesharing warned Appellant that noncompliance could result in contempt proceedings.

In April 2025, Appellant moved to suspend the former husband's timesharing temporarily because of alleged safety concerns. The

Department of Children and Families investigated and decided not to take further action. As a result, Appellant withdrew her motion.

This led to the former husband filing a motion for indirect criminal contempt against Appellant. Two weeks after this filing, the trial court issued an order directing Appellant to show cause why she should not be held in indirect criminal contempt. That order did not itself state the alleged contempt's essential facts, but instead attached and incorporated highlighted allegations from both the former husband's contempt motion and his child pickup motion.

The former husband's motion for contempt included what purported to be a notarized affidavit. The motion's highlighted allegations concerned Appellant's withholding of timesharing, along with general assertions that she could comply with the court's orders, but intended not to do so.

The former husband's motion for child pickup alleged additional timesharing violations. Although the former husband signed an acknowledgment to the emergency pickup motion stating that he understood he was swearing or affirming to the truthfulness of the claims and that false statements could result in punishment, that motion was unsworn.

At trial, Appellant objected to consideration of any actions occurring on dates beyond those supported by the sworn contempt motion. The State responded that both the contempt and pickup motions were incorporated into the order to show cause. The trial court considered the actions allegedly occurring on dates identified in both motions, and ultimately found that Appellant had willfully violated the timesharing orders. The trial court adjudicated Appellant guilty of indirect criminal contempt and imposed a four-day jail sentence. This appeal followed.

We review contempt orders under an abuse of discretion standard. *Sandelier v. State*, 238 So. 3d 831, 834 (Fla. 4th DCA 2018). But a trial court must also strictly comply with rule 3.840, and failure to do so constitutes reversible error. *Levine v. State*, 320 So. 3d 764, 765 (Fla. 4th DCA 2021). Therefore, once a court elects to impose criminal contempt sanctions, the court must follow rule 3.840's procedural safeguards. *Id.*

Rule 3.840(a) authorizes a court, on the court's own motion or on the affidavit of a person with knowledge of the facts, to issue an order to show cause stating the essential facts constituting the charged contempt. An order incorporating and attaching a sworn petition may satisfy rule 3.840(a). *Portee-Jones v. Portee*, 403 So. 3d 488, 492 (Fla. 1st DCA 2025).

We have held that the absence of an affidavit or sworn testimony supporting issuance of the contempt order is a fundamental defect. *Wilcoxon v. Moller*, 132 So. 3d 281, 287 (Fla. 4th DCA 2014). Further, the contempt charge must also identify the alleged conduct with sufficient specificity to permit preparation of a defense. *See Deter v. Deter*, 353 So. 2d 614, 618 (Fla. 4th DCA 1977).

The State concedes that the pickup motion was unsworn, but contends that the sworn contempt motion supplied the necessary support for the order to show cause. That argument overlooks the alleged acts upon which Appellant's conviction rests. The trial court found Appellant guilty for violations occurring on April 11, 12, 13, and 23. Those acts occurred *after* the former husband filed his contempt motion on April 9 and were alleged only in his unsworn April 23 pickup motion. The earlier affidavit could not supply sworn factual support for those later events. Nor did the affidavit's general assertions of an intent to disobey identify the specific later acts for which Appellant was punished.

The unnotarized acknowledgment in the April 23 pickup motion did not cure the defect. An affidavit is a statement of facts made under oath before a person authorized to administer the oath. *Jackson v. State*, 881 So. 2d 666, 667 (Fla. 5th DCA 2004). An acknowledgment at the end of a pleading does not, by itself, constitute the affidavit required by rule 3.840. *Decoro v. State*, 771 So. 2d 627, 628 (Fla. 3d DCA 2000). Here, the order to show cause relied on an unsworn motion to supply the allegations supporting the conviction for contempt. Attaching an unsworn motion alongside a sworn motion that addresses different conduct did not satisfy rule 3.840.

We therefore reverse Appellant's conviction and sentence and remand without prejudice to the initiation of new indirect criminal contempt proceedings complying with rule 3.840 or the imposition of another lawful sanction short of criminal contempt. *See Levine*, 320 So. 3d at 766. Our decision rests only on the procedural defect of noncompliance with rule 3.840, and we take no position on the merits of the violations that allegedly occurred on April 11, 12, 13, and 23.

Reversed and remanded without prejudice.

GERBER, C.J., and SHEPHERD, J., concur.

* * *

Not final until disposition of timely-filed motion for rehearing.