

Sex offender's home a parking lot - Empty space off Channelside Drive was the only place he could legally stay

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TAMPA — As a convicted sex offender, Antonio Rodriguez Rivera was ordered to live in a small parking lot on Channelside Drive.

Rivera, who had been prosecuted for impregnating his 14-year-old girlfriend when he was 23, was sentenced to community control and probation.

For refusing to stay for more than a few weeks in the empty lot, Rivera, 27, was sentenced to 10 years in state prison.

On Friday, the 2nd District Court of Appeal reluctantly upheld Rivera's punishment.

"We are troubled by the fact that the terms of Rivera's community control have rendered him homeless," the court wrote. "This does not appear to facilitate the goals of sex offender community control which are 'treatment of the offender and the protection of society.'?"

"This guy's a pretty small fellow," said attorney Richard Sanders, the public defender who represented Rivera in his appeal. Rivera stands 5-foot-9 and weighs 137 pounds, according to the Department of Corrections.

Rivera was living "in a van in a parking lot with a bunch of other sex offenders," Sanders continued. "It's quite understandable that he might want to make a decision. ... He doesn't want to wait to be killed. It obviously puts him in very much of a bind of what he is going to do. You either have to abide by the conditions of probation which puts your life in daily danger and utter misery, or you violate the terms of your probation hoping for a little bit of comfort and wait for them to come and arrest you."

Rivera tried to stay with family members, but his grandmother's home didn't fit the requirement that sex offenders live at least 1,000 feet away from schools, parks, day care facilities and school bus stops, according to court records, including a transcript of Rivera's January 2014 court hearing.

Trying to comply, his family moved to a new home they thought met the requirement. But Rivera's probation officer discovered a woman in the neighborhood was licensed to provide in-home day care.

It's not clear whether any children were present, but that didn't matter. Rivera had to go.

Rivera violated his probation by not getting permission before going with his father to Pinellas County to get car parts, and he was jailed for 30 days in September 2013.

When Rivera was released, his probation officer, Sam Jones, told him he had to live at the small, empty lot at 1200 Channelside Drive "because it fit the 1,000-foot rule," Jones testified in court. "That's one of the locations we usually put our homeless people at that time."

Rivera's grandmother gave him a van to live in, and probation officials allowed Rivera to go to her house once a day for a quick shower. Jones called the van "another concession that was made for him based on his blessings."

Within weeks, Rivera decided he didn't want to stay in the empty lot anymore, and he went to live in his family's home about 10 miles away.

When the alarm on his electronic monitor went off, the monitoring company called him. Rivera told the worker he was at his father's house. He said he didn't want to stay in the van at the parking lot alone.

So Jones wrote him up for violating the terms of his community control.

"It's the state's position that he cannot comply with probation," Assistant State Attorney Courtney Hansen Derry told Circuit Judge Chet Tharpe during the hearing.

Derry noted that probation had repeatedly told Rivera the rules. This was his second violation, she noted. Rivera was "completely understanding that he doesn't have a choice, but not wanting to stay there," she said.

His public defender, Dana M. Herce-Fulgueira, told the judge Rivera “did everything he could to try and comply with this 1,000-foot rule. He was basically left with living in a parking lot on Channelside by himself at night.”

Rivera didn't try to hide from his probation officer, she noted. He said where he was.

Without elaborating, the judge concluded Rivera's was a “willful and substantial violation,” and sentenced him to 10 years in prison.

On Friday, the 2nd DCA, in spite of its reservations, concluded that Tharpe was within his authority.

“This situation raises the question of whether Rivera's residency restrictions could be better tailored to avoid making him homeless,” the court wrote. “But because the evidence was sufficient to establish multiple willful and substantial violations of community control, we cannot say that the trial court abused its discretion in revoking community control.”

The Department of Corrections would not answer questions about Rivera's case or about the lot on Channelside Drive. Instead, the department issued this statement: “The department assists offenders in locating areas that are in compliance with residential restrictions. Offenders have the responsibility to find an appropriate residence that is in compliance with the conditions of supervision and applicable state and local residency restrictions. The department does not order offenders to live in any specific location.”

Sanders said Rivera's case is “not as unusual as you might think.”

“These people that get these sex offender charges have very severe restrictions on where they can live, particularly if they're poor, as a large number of them are,” he said. “You only have a limited number of places where you can live. And if you can't afford to live there, what are you going to do?”

Sanders previously represented another Hillsborough County sex offender, Samuel Claude Selig, a house painter with an amputated arm and trouble finding a home and a job. Selig was forced to live in a lean-to next to a trash bin behind the probation office.

The building owner didn't want Selig to live there, and he was told to find somewhere else to live.

While living behind the building, Selig's GPS monitor alerted that he was out of range, but probation officers didn't check to see if he was behind the building, according to an appellate court ruling. Officers acknowledged the alarm could have been triggered by his movements while sleeping.

Selig was found to be in violation of his community control, but the appeals court overturned that ruling saying there was no evidence it had been willful.

Hillsborough Public Defender Julianne Holt said the courts have been dealing with this issue for some time. The conditions “make these people's lives untenable,” she said, and “sets them up for failure instead of success.”

“It's almost like the more humane thing to do with some of these people would just be to sentence them to life in prison,” Sanders said. “They're going to be back for the rest of their life anyway because of these” conditions.

“They're like leper colonies,” he said. “Nobody seems to be paying a whole lot of attention to it. They're not a sympathetic lot of people, I suppose. In some sense, they brought it on themselves by their own voluntary actions.”

Sanders said there are few solutions because the Legislature is unlikely to change the law.

“Who wants to be the one to introduce a bill in the Legislature that relaxes some of these requirements? Soft on child molesters — who wants that? I think we're kind of stuck with this situation that's going to keep going and getting worse and worse and worse.”

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