

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA02-117

NORTH CAROLINA COURT OF APPEALS

Filed: 3 September 2002

STATE OF NORTH CAROLINA

v.

Mecklenburg County
No. 99 CRS 050919

DARRELL EUGENE DIGSBY

Appeal by defendant from judgment entered 7 November 2001 by Judge Marvin K. Gray in Superior Court, Mecklenburg County. Heard in the Court of Appeals 26 August 2002.

Attorney General Roy Cooper, by Assistant Attorney General Donald R. Teeter, for the State.

Nancy R. Gaines for defendant-appellant.

WYNN, Judge.

Following the revocation of defendant's probation on the basis that "he violated special condition number one in that he tested positive for marijuana on February 22nd, 2001[,]" and "was away from his place of residence on twelve different occasions," defendant presents one issue on appeal--whether the trial court erred by allowing his probation officer to testify based on a letter written by a person not present in court, Cathy Corey. We uphold the trial court's revocation of his probation and activation of defendant's suspended sentence of 16-19 months imprisonment.

On appeal, defendant challenges testimony by his probation officer, David Windham, that according to a letter from Cathy Corey, a Court liaison with TASC, a licensed drug-treatment agency, defendant was terminated from his required drug-treatment program because he tested positive for drugs. Nonetheless, although the trial court initially allowed this testimony and the admission of the letter into evidence, the trial judge subsequently stated after defense counsel's closing arguments that he was not going to consider Cathy Corey's letter or its contents. Instead, the trial court stated that,

The Court finds that the defendant through his attorney in open court has admitted that he violated special condition number one in that he tested positive for marijuana on February 22nd, 2001.

The Court finds this violation was willful and without lawful excuse.

The defendant through counsel has further admitted in open court that he was away from his place of residence on twelve different occasions and that the violation was willful and without lawful excuse.

Those twelve occasions have already been stated into the record in open court by the defendant's attorney.

The Court makes no findings with respect to violation numbers three, four, and five.

The requirement that the State present evidence to show defendant's willful violation of probation, may be waived upon a defendant's "in-court admission of the willful or without lawful excuse violation as contained in the written notice (or report) of violation[.]" *State v. Williamson*, 61 N.C. App. 531, 534, 301

S.E.2d 423, 425 (1983). Further, "[a]ny violation of a valid condition of probation is sufficient to revoke [a] defendant's probation." *State v. Tozzi*, 84 N.C. App. 517, 521, 353 S.E.2d 250, 253 (1987).

The evidence tends to show that defendant did indeed admit to violating certain terms of probation, as found by the trial court. Significantly, defendant did not contest the willfulness of these violations. Such an unqualified admission was sufficient to support the trial court's revocation of defendant's probation. See *State v. Sawyer*, 10 N.C. App. 723, 724, 179 S.E.2d 898, 900 (1971) (affirming the revocation of the defendant's probation, despite several alleged errors in his revocation hearing, where the defendant admitted that he had violated two conditions of his probation). Accordingly, even assuming *arguendo* that the trial court considered the letter of Cathy Corey to any extent, defendant cannot show prejudicial error. See *State v. Braswell*, 283 N.C. 332, 337, 196 S.E.2d 185, 189 (1973) (holding that the admission of the probation officer's testimony, as to the defendant's statement to the judge concerning his use of drugs in violation of a condition of probation was harmless error even if erroneous, where the defendant was found to have violated two other conditions of probation as well as the condition relating to drugs).

Having so concluded, the judgment revoking defendant's probation and activating his suspended sentence is,

Affirmed.

Judges MCGEE and CAMPBELL concur.

Report per Rule 30(e).