

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA10-1602  
NORTH CAROLINA COURT OF APPEALS

Filed: 6 September 2011

STATE OF NORTH CAROLINA

v.

Scotland County  
No. 10CRS001089

WYATT PRESLEY BETHEA

Appeal by defendant from judgment entered 13 August 2010 by Judge Richard T. Brown in Superior Court, Scotland County.

Heard in the Court of Appeals 18 July 2011.

*Attorney General Roy A. Cooper, III, by Assistant Attorney General Letitia C. Echols, for the State.*

*Irons & Irons, P.A., by Ben G. Irons II, for defendant-appellant.*

STROUD, Judge.

Wyatt Presley Bethea ("defendant") appeals from a judgment revoking his probation. After careful review, we affirm.

On 19 January 2010, defendant pled guilty pursuant to a plea agreement to felony larceny. The trial court sentenced defendant to a term of eleven to fourteen months imprisonment,

but suspended defendant's sentence and placed him on supervised probation for thirty-six months.

On 8 July 2010, a probation violation report was filed alleging that defendant had failed to comply with the terms of his probation. Specifically, it was alleged that defendant had: (1) tested positive for marijuana on 2 and 16 June 2010, (2) violated curfew, (3) failed to attend Criminal Justice Partnership Program ("CJPP") classes on six dates, and (4) fallen in arrears on the monetary conditions of his probation.

On 13 August 2010, a probation violation hearing was held in Superior Court, Scotland County. Defendant waived counsel and represented himself at the hearing. Defendant denied violating curfew, and provided a doctor's note excusing two of his absences from the CJPP classes. Otherwise, defendant admitted to each of the violations. The State subsequently declined to proceed on the allegation that defendant had violated curfew.

Defendant then offered a statement attempting to provide excuses for his admitted violations. Defendant testified and conceded that he did fail two drug screens. Defendant claimed, however, that "usually everybody's getting 30 days, and I hadn't been on supervision but 16 days, . . . they didn't give me the

full 30 days to clean my system out." The trial court nevertheless found that defendant's violations were without lawful excuse, revoked defendant's probation, and activated his suspended sentence. Defendant appeals.

On appeal, defendant argues that he was not provided written notice of the requirement that he participate in the CJPP or of the conditions of the program. Defendant claims that the failure to give him notice of his obligation to participate in the program, or of the program's rules led to confusion and supported his contention at the probation hearing that his violations were not willful. Specifically, defendant contends that he was led to believe he would have 30 days to clear his system of any drugs prior to testing.

After careful review of the record, briefs and contentions of the parties, we affirm. "It is well established that 'probation or suspension of sentence is an act of grace' and not a right." *State v. Alston*, 139 N.C. App. 787, 794, 534 S.E.2d 666, 670 (2000). This Court has stated:

Any violation of a valid condition of probation is sufficient to revoke defendant's probation. All that is required to revoke probation is evidence satisfying the trial court in its discretion that the defendant violated a valid condition of probation without lawful excuse.

*State v. Tozzi*, 84 N.C. App. 517, 521, 353 S.E.2d 250, 253 (1987) (citations omitted).

Here, defendant was placed on probation on 19 January 2010. One of the conditions of defendant's probation was that he "[n]ot use, possess or control any illegal drug or controlled substance[.]" This condition of probation was separate and distinct from any condition of probation that he participate in the CJPP. Thus, regardless of whether defendant was given proper notice concerning the condition of probation that he participate in the CJPP, as well as of the program's rules, defendant was given proper notice that he could not use marijuana while on probation. Moreover, even assuming *arguendo* that defendant was afforded 30 days to "clean his system" prior to drug testing, defendant had been under supervision for over five months when he tested positive for marijuana. Thus, we conclude the trial court did not abuse its discretion in revoking defendant's probation.

Because violation of any single condition of probation is sufficient to revoke probation, we need not consider defendant's remaining probation violations. Accordingly, we affirm.

AFFIRMED.

Judges CALABRIA and STEELMAN concur.

Report per Rule 30(e).