

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA11-172
NORTH CAROLINA COURT OF APPEALS

Filed: 20 September 2011

STATE OF NORTH CAROLINA

v.

Columbus County
No. 08 CRS 3270-71

JOHN MOORE

Appeal by Defendant from judgments dated 11 August 2010 by Judge D. Jack Hooks, Jr. in Columbus County Superior Court. Heard in the Court of Appeals 31 August 2011.

Attorney General Roy Cooper, by Assistant Attorney General Kathryn J. Thomas, for the State.

Greene & Wilson, P.A., by Thomas Reston Wilson, for Defendant.

STEPHENS, Judge.

On 10 December 2009, Defendant John Moore ("Moore") pled guilty in Columbus County Superior Court, the Honorable Douglas B. Sasser presiding, to one count each of assault with a deadly weapon inflicting serious injury and possession of a firearm by a felon. After sentencing Moore to 24 to 38 months imprisonment for the assault charge and 12 to 15 months for the possession of

a firearm charge, Judge Sasser suspended the sentences and placed Moore on supervised probation for 60 months.

As conditions of his probation, Moore was required to (1) serve a six-month term of imprisonment in the custody of the County Sheriff, with a credit for time served of 169 days; (2) participate in the Intensive Probation program for six months; (3) "[s]ubmit at reasonable times to warrantless searches by a probation officer of [Moore's] person, and of [his] vehicle and premises while [he] is present"; (4) report to a probation officer at reasonable times and places and obtain prior approval for, and notify the officer of, any change in address or employment; (5) not commit a criminal offense in any jurisdiction; and (6) not possess a firearm.

In March 2010, Moore's probation officer filed a probation violation report alleging that Moore had committed the following violations of the conditions of his probation: on 11 and 23 February 2010, Moore failed to report for scheduled office visits; on 8 February 2010, Moore violated his curfew; on 1 March 2010, Moore possessed a firearm; and Moore had "pending charges with an offense date of 3/01/10."

On 11 August 2010, following a probation revocation hearing in Columbus County Superior Court, the Honorable D. Jack Hooks,

Jr. presiding, Judge Hooks entered orders revoking Moore's probation. In the probation revocation orders, Judge Hooks found that (1) Moore violated his probation by failing to report for scheduled office visits on 11 and 23 February 2010 and by possessing a firearm on 1 March 2010; and (2) "[e]ach violation is, in and of itself, a sufficient basis upon which [the trial court] should revoke probation and activate the suspended sentence." Judge Hooks activated Moore's sentences, ordering that they be served consecutively. Moore appeals.

On appeal, nearly all of Moore's brief is directed to challenging his weapon-possession probation violation on grounds of an alleged constitutional error committed by Judge Hooks in admitting evidence of Moore's statements, made during a warrantless search of his home, conceding possession of a firearm. Moore's only mention of the other violations found by Judge Hooks - Moore's failure to report for two scheduled office visits - is in the conclusion of Moore's brief, in which Moore argues that "[t]he [S]tate's remaining basis for [probation] violation was otherwise insufficient, and likely would have been deemed an abuse of discretion had it been the sole basis for [probation] revocation, where it amounted to [] Moore missing a single office visit during his second month of probation."

Contrary to Moore's prognostication, however, this Court has repeatedly held that any single violation of a condition of probation is sufficient to warrant revocation of probation. See, e.g., *State v. Tozzi*, 84 N.C. App. 517, 521, 353 S.E.2d 250, 253 (1987) ("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." (citations omitted)). Accordingly, Judge Hooks' finding that Moore violated his probation by failing to report for two scheduled office visits - which finding is unchallenged on appeal and, thus, binding on this Court, *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991) ("Where no exception is taken to a finding of fact by the trial court, the finding is presumed to be supported by competent evidence and is binding on appeal." (citation omitted)) - is a sufficient basis for revocation of Moore's probation. Therefore, the order revoking Moore's probation is

AFFIRMED.

Judges ERVIN and BEASLEY concur.

Report per Rule 30(e).