

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA11-269  
NORTH CAROLINA COURT OF APPEALS

Filed: 6 September 2011

STATE OF NORTH CAROLINA,

v.

Catawba County

Nos. 07CRS2604

BOBBY KEITH HEFNER

08CRS1090

Appeal by defendant from judgment entered on or about 5 November 2010 by Judge Steve A. Balog in Superior Court, Catawba County. Heard in the Court of Appeals 29 August 2011.

*Attorney General Roy A. Cooper, III, by Assistant Attorney General Torrey Dixon, for the State.*

*William D. Auman, for defendant-appellant.*

STROUD, Judge.

Bobby Keith Hefner ("defendant") appeals from revocation of probation and activation of a sentence of fifteen to eighteen months imposed on convictions of accessing computers and identity fraud. The trial court found that defendant "[was] in violation of his probation as alleged, with regard to paragraph numbers one, two and four, and that these violations [were] willful and without lawful excuse. Each justifies revocation of

his probation." Defendant's sole argument on appeal is that the evidence fails to support the trial court's conclusion that the violations were willful or without valid excuse.

All that is required in a hearing [upon a violation report] is that the evidence be such as to reasonably satisfy the judge in the exercise of his sound discretion that the defendant has willfully violated a valid condition of probation or that the defendant has violated without lawful excuse a valid condition upon which the sentence was suspended.

*State v. Hewett*, 270 N.C. 348, 353, 154 S.E.2d 476, 480 (1967).

"[T]he burden is on the defendant to present competent evidence of his inability to comply [with the terms of his probation]; . . . otherwise, evidence of defendant's failure to comply may justify a finding that defendant's failure to comply was willful or without lawful excuse." *State v. Crouch*, 74 N.C. App. 565, 567, 328 S.E.2d 833, 835 (1985) (citation omitted).

In the case at bar, defendant admitted that he violated two of the conditions. He offered evidence in excuse of only one of the two conceded violations. He offered no credible evidence to excuse his conviction of driving while license revoked.

We hold the trial court did not abuse its discretion in finding defendant willfully and without valid excuse violated a term or condition of probation. We affirm the judgment.

AFFIRMED.

Judges CALABRIA and STEELMAN concur.

Report per Rule 30(e).