

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA11-363
NORTH CAROLINA COURT OF APPEALS

Filed: 20 September 2011

STATE OF NORTH CAROLINA

v. Cabarrus County
Nos. 07 CRS 9698
TERRANCE L. GRAHAM 07 CRS 9699
07 CRS 9700

Appeal by defendant from judgments entered 9 December 2010 by Judge Theodore S. Royster in Cabarrus County Superior Court. Heard in the Court of Appeals 6 September 2011.

Attorney General Roy Cooper by Assistant Attorney General Donna B. Wojcik, for the State.

Edward Eldred for defendant-appellant.

HUNTER, JR., Robert N., Judge.

On 30 November 2006, defendant pled guilty to three counts of indecent liberties with a child in Stanly County Superior Court in file numbers 04 CRS 5831, 04 CRS 5832, and 04 CRS 5833. The trial court entered judgment imposing three consecutive terms of 13 to 16 months imprisonment, suspended for 60 months. The supervision of defendant's probation was transferred to Cabarrus County and assigned file numbers 07 CRS 9698, 07 CRS

9699, and 07 CRS 9700, respectively. On 30 November 2010, defendant's probation officer filed a violation report in each case alleging defendant violated his curfew. A hearing was held on 9 December 2010. After the hearing, the trial court entered judgment revoking defendant's probation in all three cases. Defendant appeals.

On appeal, defendant contends the judgment suspending the sentence in Stanly County file number 04 CRS 5833 did not impose any special conditions of probation and the regular conditions of probation did not allow for the imposition of a curfew. Therefore, defendant contends the trial court erred in finding he violated his probation by being outside of his residence after 6:00 p.m.

"Probation is an act of grace by the State to one convicted of a crime." *State v. Freeman*, 47 N.C. App. 171, 175, 266 S.E.2d 723, 725, *disc. rev. denied*, 301 N.C. 99, 273 S.E.2d 304 (1980). "All that is required in revoking a suspended sentence is evidence which reasonably satisfies the judge in the use of his sound discretion that a condition of probation has been willfully violated." *State v. Monroe*, 83 N.C. App. 143, 145, 349 S.E.2d 315, 317 (1986) (citing *State v. Hewett*, 270 N.C. 348, 353, 154 S.E.2d 476, 480 (1967)), *cert. denied*, 322 N.C.

484, 370 S.E.2d 232 (1988). "[O]nce the State has presented competent evidence establishing a defendant's failure to comply with the terms of probation, the burden is on the defendant to demonstrate through competent evidence an inability to comply with the terms." *State v. Terry*, 149 N.C. App. 434, 437-38, 562 S.E.2d 537, 540 (2002). "If the trial court is then reasonably satisfied that the defendant has violated a condition upon which a prior sentence was suspended, it may within its sound discretion revoke the probation." *Id.* at 438, 562 S.E.2d at 540.

In this case, defendant argues there is no support in the record on appeal or in the transcript for the probation officer's contention that defendant was subject to a curfew in case number 07 CRS 9700 (Stanly County file number 04 CRS 5833). We disagree. Defendant's probation officer testified that on 5 November 2010, defendant was placed under a curfew from 6 p.m. to 6 a.m. as part of his sex offender control program conditions. During those hours defendant was expected to be at his residence unless he had permission to be away. On 21 November 2010, defendant was stopped at 10:35 p.m. by a Cabarrus County sheriff's deputy and given a citation. The probation officer testified the citation was evidence defendant was away

from his residence during the time of his mandatory curfew. On cross-examination defendant admitted he was placed on the curfew until 5 February 2011. Defendant identified the documents he signed indicating he would be on a curfew until that date. He also identified the parking citation he received on 21 November 2010. The State offered the documents signed by defendant and the citation into evidence and the trial court allowed the items into evidence. We conclude the trial court did not abuse its discretion in revoking defendant's probation. The judgments are affirmed.

Affirmed.

Judges MARTIN and THIGPEN concur.

Report per Rule 30(e).