

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA11-372
NORTH CAROLINA COURT OF APPEALS

Filed: 18 October 2011

STATE OF NORTH CAROLINA

v.

Franklin County
No. 08 CRS 52219

QUINCY DONNELLE BRYANT

Appeal by defendant from judgment entered 30 November 2010 by Judge Henry W. Hight, Jr. in Franklin County Superior Court. Heard in the Court of Appeals 19 September 2011.

Attorney General Roy Cooper, by Assistant Attorney General Lisa Y. Harper, for the State.

Greene & Wilson, P.A., by Thomas Reston Wilson, for defendant-appellant.

THIGPEN, Judge.

Defendant appeals from a judgment upon revocation of probation. Defendant pled guilty on 28 January 2009 to felony speeding to elude arrest. The court imposed a term of imprisonment for eight to ten months. The court suspended the sentence and placed defendant on supervised probation for a period of thirty-six months. As conditions of probation, the

court, *inter alia*, required defendant to pay court costs, fees, and a fine totaling the amount of \$1,611.50, to pay a probation supervision fee as determined by his probation officer, to report to his probation officer at reasonable times and places, and not to operate a motor vehicle without an operator's license.

On 14 June 2010 defendant's probation officer filed a violation report alleging defendant willfully violated the foregoing conditions of probation by: (1) failing to report to the probation officer in more than ten months; (2) failing to pay any amount toward the monetary condition in more than eight months; (3) failing to pay any amount toward his monthly probation supervision fee in more than eight months; and (4) being charged with driving while license revoked on 24 July 2009.

The court conducted a hearing on 30 November 2010. Dean Shearin testified at the hearing that he became defendant's probation officer on 5 May 2010, replacing Kirk Jones who had replaced Jerry Wester, who retired around the beginning of 2010. In reviewing the file, Shearin noted that defendant had reported to the probation office only seven times in twenty-two months. Shearin scheduled evening appointments once or twice per month

to accommodate the work schedules of probationers who worked during the day. Defendant told Shearin that he worked for a roofing company. Shearin scheduled one appointment in the evening especially so defendant would have time to report after work but defendant failed to report for that appointment. The last time defendant reported to his probation officer was on 31 August 2009, when he reported to Mr. Wester. Thereafter, defendant visited the probation office once, on 18 February 2010, when he saw the supervisor of the probation office. The last time defendant made a payment toward the monetary condition was on 14 September 2009, and at the time of the violation hearing, defendant was in arrears in the amount of \$1,160.

Defendant testified that he regularly visited with Mr. Wester until Wester's retirement and replacement by Kirk Jones; that Mr. Jones left a note on the door of defendant's residence instructing defendant to contact Mr. Jones; and that when defendant called the probation office to speak with Mr. Jones, he was told Mr. Jones was no longer employed there. Upon learning that Mr. Shearin was his new probation officer, he called Shearin and told him that he worked late and sometimes stayed overnight. He requested evening appointments. He also went to the probation office and tried to see Mr. Shearin, but

Mr. Shearin was not in the office. He instead spoke to the supervisor, Mr. Dickerson, on two occasions. He went to the probation office four times when nobody was there. At the time of the hearing, he could not pay the monetary condition but his mother was trying to obtain a loan so he could pay it. Defendant testified on cross-examination that he worked five, sometimes six, days per week for a roofing company, and that when the weather was bad, he worked inside installing sheetrock and insulation for the company. He acknowledged that he could have used some of his earnings to pay his court debt but he also had "kids and bills."

Defendant's girlfriend testified that defendant helped to pay the household bills, and that whatever defendant could not pay, she pays out of her earnings from her own full-time job. They placed priority upon paying the rent and the light bill.

After hearing the evidence and arguments of counsel, the court found that defendant failed to meet with his probation officer as directed. The court also found that defendant has not made any payments since 14 September 2009 despite having been gainfully employed during that period of time. The court found that the violations were willful. The court revoked probation and activated the sentence. Defendant appealed.

Defendant contends the court failed to consider his evidence and abused its discretion in finding that his failure to make the payments for the monetary condition and monthly supervision fee was willful. He also contends the court abused its discretion by finding that his failure to report to his probation officer was willful and without lawful 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). "The findings of the judge, if supported by competent evidence, and his judgment based thereon are not reviewable on appeal, unless there is a manifest abuse of discretion." *State v. Guffey*, 253 N.C. 43, 45, 116 S.E.2d 148, 150 (1960). Evidence which shows the defendant failed to comply with a term or condition of probation is sufficient to support a finding that the violation was willful or without lawful excuse unless the defendant can present evidence to persuade the court that the violation was not committed willfully or without lawful excuse. *State v.*

Crouch, 74 N.C. App. 565, 567, 328 S.E.2d 833, 835 (1985). The trial judge, as the fact finder, is not required to accept the defendant's testimony or evidence as true. *State v. Young*, 21 N.C. App. 316, 321, 204 S.E.2d 185, 188 (1974). Evidence which contradicts or disputes the prosecution's evidence simply creates credibility issues for resolution by the trial judge. *State v. Darrow*, 83 N.C. App. 647, 649, 351 S.E.2d 138, 140 (1986).

The record shows that after hearing the evidence and arguments of counsel and reviewing the file, the court observed that defendant had not even been regularly making his visits while he was being supervised by Mr. Wester, as Mr. Wester had signed a violation report in June 2009 making the same allegation. The court also noted that the last time defendant had made any payment toward the monetary condition was on 14 September 2009. The court also observed that another judge had found that defendant failed to make required visits, failed to make the court payments, and violated his curfew but continued defendant on probation. The court remarked that "it seems to me like [defendant] continued his habit of not visiting." The court also commented that "[i]t's not just whether you go by the probation office"; instead, the probationer must report to the

probation officer so that "he can supervise [the probationer]." As a final comment, the court stated, "He certainly hasn't paid, and he's certainly had an opportunity to be gainfully employed and was gainfully employed."

The above statements reflect a consideration by the court of the evidence presented both by the prosecution and defendant. A court does not abuse its discretion by failing to make explicit findings that it considered and evaluated the defendant's evidence because "[i]t would not be reasonable to require that a judge make specific findings of fact on each of defendant's allegations tending to justify his breach of conditions. The breach of any one condition is sufficient grounds to revoke probation." *State v. Williamson*, 61 N.C. App. 531, 535, 301 S.E.2d 423, 426 (1983).

We hold the court's findings are supported by competent evidence. We conclude the court did not abuse its discretion by revoking defendant's probation. We affirm the judgment.

AFFIRMED.

Chief Judge MARTIN and Judge HUNTER, JR. concur.

Report per Rule 30(e).