

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA11-625
NORTH CAROLINA COURT OF APPEALS

Filed: 20 December 2011

STATE OF NORTH CAROLINA

v.

Cumberland County
No. 08 CRS 50799

TIMOTHY JEROME MEDLEY JR.

Appeal by defendant from judgment entered 31 January 2011 by Judge Gregory A. Weeks in Cumberland County Superior Court. Heard in the Court of Appeals 28 November 2011.

Attorney General Roy Cooper, by Assistant Attorney General Hilda Burnett-Baker, for the State.

Edward Eldred for defendant-appellant.

ELMORE, Judge.

Timothy Jerome Medley, Jr., (defendant) appeals from judgment which revoked his probation and activated his suspended sentence. For the following reasons, we affirm the judgment but remand for correction of a clerical error.

On 14 October 2009, defendant pled guilty to one count of assault by strangulation and one count of child abuse. The trial court consolidated the offenses for sentencing and

sentenced defendant to twenty-three to thirty-seven months' imprisonment. The sentence was suspended and defendant was placed on supervised probation for thirty-six months. Special conditions of defendant's probation required defendant to report to the Day Reporting Center (DRC) for a period of six months, and to abide by all rules and regulations of the program.

Defendant's probation officer, James Harding, filed a violation report on 3 March 2010. The report alleged that defendant had violated the terms of his probation by: (1) missing curfew; (2) failing to report to the GED and Life Skills classes at the local DRC; and (3) absconding.

The matter was heard on 31 January 2011. After hearing testimony from probation officer Harding, the trial court determined that defendant willfully violated the conditions of his probation as set out in paragraphs 1 and 2 of the violation report. The trial court specifically made "no finding as to paragraph three," that defendant absconded. By written judgment entered 31 January 2011, the trial court revoked defendant's probation and activated his sentence based upon a finding that defendant violated all three conditions set forth in the violation report. Defendant appeals.

Defendant first contends that the trial court's written

judgment contains a clerical error because it shows that defendant willfully violated all three conditions of probation set out in the violation report. We agree.

This Court has used the following definition of "clerical error": "[A]n error resulting from a minor mistake or inadvertence, esp. in writing or copying something on the record, and not from judicial reasoning or determination." *State v. Jarman*, 140 N.C. App. 198, 202, 535 S.E.2d 875, 878 (2000) (quoting *Black's Law Dictionary* 563 (7th ed. 1999)). Here, Judge Weeks found that defendant willfully violated his probation as specifically set forth in numbered paragraphs 1 and 2 of the violation report, but he did not make a finding as to the violation set forth in paragraph 3. Therefore, the written judgment should reflect only paragraphs 1 and 2 of the violation report. "When, on appeal, a clerical error is discovered in the trial court's judgment or order, it is appropriate to remand the case to the trial court for correction because of the importance that the record 'speak the truth.'" *State v. Smith*, 188 N.C. App. 842, 845, 656 S.E.2d 695, 696 (2008) (quotations and citation omitted). Accordingly, we remand to the trial court for correction of this clerical error.

Defendant next contends that the trial court erred in

concluding that he willfully violated the terms of his probation by missing curfew and by failing to report to classes at the DRC. Preliminarily, we note that, although the trial court found that defendant violated his probation as set forth in paragraphs 1 and 2, we find it dispositive that the evidence is sufficient to support a finding that defendant failed to report to classes at the DRC under paragraph 2. *See State v. Seay*, 59 N.C. App. 667, 670-71, 298 S.E.2d 53, 55 (1982) (breach of any one condition is sufficient grounds to revoke probation).

In order to revoke a defendant's probation, the evidence need only "reasonably satisfy the [trial court] in the exercise of [its] 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). A verified probation violation report is competent evidence that a violation occurred. *State v. Duncan*, 270 N.C. 241, 246, 154 S.E.2d 53, 58 (1967). A defendant has the burden of presenting competent evidence demonstrating an inability to comply with the terms of probation. *State v. Tozzi*, 84 N.C. App. 517, 521, 353 S.E.2d 250, 253 (1987). "[E]vidence of [a] defendant's failure to

comply may justify a finding that [a] defendant's failure to comply was wilful or without lawful excuse." *Id.* A trial court's judgment revoking a defendant's probation will only be disturbed upon a showing of a manifest abuse of discretion. *State v. Guffey*, 253 N.C. 43, 45, 116 S.E.2d 148, 150 (1960).

We conclude that the State presented sufficient evidence to show that defendant willfully violated a condition of his probation without lawful excuse. Here, it was alleged in the violation report that defendant willfully violated a condition of his probation by failing to "[r]eport as directed by the probation officer to the Day Reporting Center for a period of 6 months, and abide by all rules and regulations of that program." The violation report specifically alleged that defendant failed to report to GED and Life Skills classes. Harding's testimony reflects that, as part of the program at the DRC, defendant was required to attend GED classes Monday through Thursday, and to attend Life Skills classes on Friday. Harding testified to the following: (1) defendant signed an agreement regarding the requirements of the DRC program; (2) in October 2009, Harding informed defendant he had to attend the classes; and (3) in January 2010, Harding and defendant had a conversation about defendant's duty to attend the DRC program and its classes.

Harding testified that DRC students were required to sign in each day, and that "[a]ll students know that they check attendance by signing in." Harding further testified that he checked the sign-in sheet each week and that defendant had not signed in on 3, 12, 15, 16, 19, 22, 23, 24, 25 and 26 February 2010.

A defendant has the burden of showing excuse or lack of willfulness; otherwise, evidence of failure to comply is sufficient to support a finding that the violation was willful or without lawful excuse. *State v. Crouch*, 74 N.C. App. 565, 567, 328 S.E.2d 833, 835 (1985). We hold that there is evidence in the record to support the trial court's findings that defendant willfully and without lawful excuse violated the conditions of his probation by not reporting to the DRC for classes. We further hold that it was within the trial court's discretion to revoke defendant's probation and activate his sentence. Accordingly, the trial court's judgment upon revocation is affirmed and remanded for correction of a clerical error.

Affirmed and remanded for correction of clerical error.

Judges McGEE and McCULLOUGH concur.

Report per Rule 30(e).