

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA11-657
NORTH CAROLINA COURT OF APPEALS

Filed: 20 December 2011

STATE OF NORTH CAROLINA

v.

New Hanover County
No. 08 CRS 53953

TEVIN D. MCINTYRE

Appeal by defendant from judgments entered 7 February 2011 by Judge Phyllis M. Gorham in New Hanover County Superior Court. Heard in the Court of Appeals 28 November 2011.

Attorney General Roy Cooper, by Assistant Attorney General Letitia C. Echols, for the State.

Michael J. Reece for defendant.

ELMORE, Judge.

Tevin D. McIntyre (defendant) appeals from the superior court's judgments revoking his probation and activating his suspended sentences. We affirm.

On 29 April 2009, defendant entered a plea of guilty to the charges of conspiracy to commit robbery with a dangerous weapon and assault with a deadly weapon inflicting serious injury. The trial court imposed two consecutive suspended sentences of

twenty-five to thirty-nine months imprisonment and placed defendant on supervised probation for sixty months.

On or about 8 November 2010, defendant's probation officer filed violation reports, which alleged the following violations: (1) defendant tested positive for THC on 14 August 2009 and 19 October 2010; (2) defendant was in arrears on his court fee obligation; (3) defendant was in arrears on his probation supervision fee obligation; (4) defendant was terminated from TASC as unsuccessful; and (5) defendant was charged with possession of a firearm by a felon on 10 June 2010, and the conditions of his probation prohibited defendant from possessing a firearm.

The trial court conducted a probation revocation hearing on 7 February 2011. Defendant admitted that he willfully violated the conditions of his probation by testing positive for THC. Defendant also admitted that he was in arrears on his monetary obligations and that he had been terminated from TASC, but denied the willfulness of these violations.

At the hearing, a detective testified that on 9 June 2010, police officers stopped a vehicle in which defendant was a passenger. The officers conducted a search of the vehicle and found two firearms. After receiving *Miranda* warnings, defendant

told an officer (1) that one of the firearms belonged to him, (2) that he knew it worked because he shot it one time, and (3) that he knew he was prohibited from possessing a firearm. Defendant objected to this violation on the ground that the firearm and defendant's confession were the products of an illegal search. The State argued that police officers had a sufficient basis to search the vehicle and that the exclusionary rule does not apply to probation revocation proceedings. The trial court found that the evidence was sufficient to establish that defendant was in possession of the firearm.

Thereafter, defendant requested that the trial court adopt the report from Sentencing Services, which recommended that defendant report to the New Hanover County Day Sentencing Center, where he would receive daily supervision and be eligible for certain classes. The State opposed Sentencing Services's recommendation and requested that defendant's probation be revoked. The trial court declined defendant's request and found that defendant had willfully violated the conditions of his probation by testing positive for THC and by possessing a handgun. The trial court, however, found that the remaining violations were not willful. Nevertheless, the trial court

revoked defendant's probation and activated his sentences. Defendant now appeals.

Defendant's first argument on appeal is that the trial court abused its discretion in revoking defendant's probation. Under N.C. Gen. Stat. § 15A-1344, a trial court has authority to reduce, terminate, continue, extend, modify, or revoke probation upon a finding that the defendant violated the conditions of probation. During a probation revocation hearing, the State bears the burden of presenting evidence "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." *State v. Lucas*, 58 N.C. App. 141, 145, 292 S.E.2d 747, 750 (internal quotation omitted), *disc. review denied*, 306 N.C. 390, 293 S.E.2d 593 (1982). Such evidence is sufficient to support a finding of a violation unless the defendant successfully carries the burden of showing lawful excuse or lack of willfulness. *State v. Crouch*, 74 N.C. App. 565, 567, 328 S.E.2d 833, 835 (1985). "Findings made in support of revoking probation must be supported by competent evidence, and will not be disturbed on appeal without a showing that the trial court committed a manifest abuse of discretion." *State v. Sherrod*,

191 N.C. App. 776, 777-78, 663 S.E.2d 470, 472 (2008) (internal quotation omitted).

Defendant argues that the trial court failed to properly apply its discretion by ignoring the recommendations of Sentencing Services. Defendant contends that the trial court should have considered the following factors: (1) defendant was seventeen at the time the original offenses occurred, (2) defendant provided substantial assistance to the State, and (3) defendant had no record. Instead, defendant argues, that the trial court overemphasized the firearm violation. We disagree. Defendant admitted that he willfully violated probation by testing positive for THC. Even assuming *arguendo* that the firearm violation was improper, defendant's admission to one violation alone is sufficient, because "[a]ny violation of a valid condition of probation is sufficient to revoke defendant's probation." *State v. Tozzi*, 84 N.C. App. 517, 521, 353 S.E.2d 250, 253 (1987) (citation omitted). Defendant provided no evidence of lawful excuse or inability to comply with the conditions of his probation. Thus, defendant's argument goes solely to the trial court's disposition, which is a matter of the trial court's discretion. We cannot say that the trial court's decision to revoke probation was manifestly without

reason. Therefore, we hold that the trial court did not err in revoking defendant's probation.

Next, defendant argues that the trial court made a clerical error in the judgments. The trial court found only two violations at the probation revocation hearing, but the judgments show five violations. Defendant argues that this case should be remanded to the trial court to correct the discrepancy. This Court has found that "[a] clerical error is an error resulting from a minor mistake or inadvertence, especially in writing or copying something on the record, and not from judicial reasoning or determination." *State v. Lark*, 198 N.C. App 82, 95, 678 S.E.2d 693, 702 (2009) (internal quotations and citations omitted), *disc. review denied*, 363 N.C. 808, 692 S.E.2d 111 (2010). Where a clerical error is found, the case may be remanded "to the trial court for the limited purpose of correcting the clerical errors." *Id.* at 95, 678 S.E.2d at 703. After reviewing the transcript, we agree that the error pointed out by defendant is indeed a clerical error. Accordingly, we remand the instant case to the trial court for the limited purpose of correcting the clerical errors in the judgment and commitment forms.

Affirmed; remanded for correction of clerical error.

Judges McGEE and McCULLOUGH concur.

Report per Rule 30(e).