

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA01-1150

NORTH CAROLINA COURT OF APPEALS

Filed: 7 May 2002

STATE OF NORTH CAROLINA

v.

Forsyth County
Nos. 99 CRS 45298-01
99 CRS 45305

ANGELA NICOLE MILLER

Appeal by defendant from judgments entered 9 July 2001 by Judge Clarence W. Carter in Forsyth County Superior Court. Heard in the Court of Appeals 22 April 2002.

Attorney General Roy Cooper, by Assistant Attorney General Kay Linn Miller Hobart, for the State.

Samuel L. Bridges for defendant-appellant.

MARTIN, Judge.

Defendant pled guilty on 26 October 1999 to charges of possession of cocaine with intent to sell and deliver, sale of cocaine, delivery of cocaine, and maintaining a dwelling for the keeping of controlled substances. The court consolidated the convictions into two judgments and imposed sentences of a minimum term of 15 months and a maximum term of 18 months in each judgment. The court suspended the sentences and placed defendant on supervised probation for 36 months.

On 9 March 2001, defendant's probation officer executed violation reports alleging defendant violated the monetary

condition of probation and the special condition of probation requiring her to attend and comply with counseling at CENTERPOINT. At the conclusion of a hearing on 9 July 2001, the court found that defendant willfully and without lawful excuse committed the alleged violations. The court revoked probation and activated the sentences, ordering them to run consecutively. Defendant appealed.

Defendant first argues that the evidence is insufficient to support a finding that defendant willfully violated probation and that the court erred by failing to make findings of fact showing it considered defendant's evidence of inability to pay. The assignment of error upon which this argument is based states that the court erred "in that it revoked the probation of the defendant without sufficient evidence in the record indicating that defendant committed willful violations of her probation." The assignment of error does not state that the court erred by failing to make findings of fact showing it considered defendant's evidence. Therefore, only the first part of defendant's contention is presented by an assignment of error and is properly before us for review. See *Koufman v. Koufman*, 330 N.C. 93, 408 S.E.2d 729 (1991).

To revoke probation "[a]ll that is required . . . 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). Proof beyond a reasonable doubt is not necessary. *State v. Tozzi*, 84 N.C. App. 517, 353 S.E.2d 250 (1987). The 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, 328 S.E.2d 833 (1985). A single violation is sufficient to revoke the defendant's probation. *State v. Freeman*, 47 N.C. App. 171, 266 S.E.2d 723, *disc. review denied*, 301 N.C. 99, 273 S.E.2d 304 (1980).

The evidence shows: defendant was required to pay a total of \$65.00 per month to satisfy the monetary condition of probation of the two judgments; that defendant was in arrears at the time of the violation reports by the amount of \$411.00 on one judgment and the amount of \$455.00 on the other judgment; that the probation officer delayed the court hearing until 2 July 2001 to allow defendant additional time to comply; that defendant made one payment of \$100.00 on 22 March 2001, and made no other payments between that time and the date of the hearing; and that defendant failed to maintain steady employment, having lost a number of jobs for reasons within her control. The foregoing evidence is sufficient to support the court's finding that defendant willfully and without lawful excuse violated the monetary condition of probation.

Because a finding of a single violation is sufficient to support revocation of probation, *Freeman*, 47 N.C. App. 171, 266 S.E.2d 723, it is not necessary for us to consider whether the

evidence is sufficient to support the finding that defendant violated the condition requiring defendant to undergo evaluation and treatment. For this reason also, it is not necessary for us to consider defendant's next contention that the court erred by revoking probation for violation of a condition not listed in the judgments suspending sentence, namely evaluation and treatment by CENTERPOINT.

Finally, defendant contends that the court erred by ordering the activated sentences to run consecutively when the original sentences ran concurrently. We have held that a judge revoking probation may order activated sentences to run consecutively without regard to whether the original sentences ran consecutively or concurrently. *State v. Paige*, 90 N.C. App. 142, 369 S.E.2d 606 (1988). This contention is overruled.

The judgments are affirmed.

Affirmed.

Judges HUNTER and BRYANT concur.

Report per Rule 30(e).