

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA01-326

NORTH CAROLINA COURT OF APPEALS

Filed: 19 March 2002

IN THE MATTER OF:

B.P.,  
a Juvenile

Durham County  
No. 99 J 134

Appeal by respondent-juvenile from order entered 17 October 2000 by Judge Marcia H. Morey in Durham County District Court. Heard in the Court of Appeals 23 January 2002.

*Attorney General Roy Cooper, by Assistant Attorney General Mary S. Mercer, for the State.*

*UNC Law School Clinical Programs, by Joseph E. Kennedy, for respondent-juvenile.*

WALKER, Judge.

The juvenile was initially adjudicated delinquent on 14 September 1999 for assault and was placed on probation for a period of one year. On 6 September 2000, the juvenile's court counsel discovered that she had stopped attending school regularly. As a result, on 13 September 2000, the counselor filed a motion for review based on his concerns that the juvenile was having problems at school. A scheduled hearing was continued until 17 October 2000, at which time the juvenile moved to dismiss on grounds that pursuant to N.C. Gen. Stat. § 7B-2510(c), the juvenile court lacked the authority to extend her probation.

The juvenile court denied this motion and, after receiving evidence, entered an order extending the juvenile's probation for three months.

In her appeal, the juvenile argues the juvenile court erred in denying her motion to dismiss. She maintains that, in accordance with N.C. Gen. Stat. § 7B-2510(c), an extension of probation may not be ordered after the original probation has expired.

Our Court recently addressed this identical issue and has held that where a motion for review has been filed prior to the expiration of a juvenile's probation, a juvenile court has the "limited discretion . . . to modify probation within a reasonable time after its expiration." *In re T.J.*, \_\_\_ N.C. App. \_\_\_, \_\_\_, 553 S.E.2d 418, 419 (COA No. 00-835, filed 16 October 2001). "The determination of what amount of time is reasonable should be made in light of the time necessary to schedule a hearing on a juvenile's probation and the time needed by the juvenile and the State to prepare for such a hearing." *Id.*

Here, our review of the record reveals that a motion for review was filed before the expiration of the juvenile's probation and that a 19 September 2000 hearing was continued until 17 October 2000. As in *T.J.*, we conclude the juvenile court's modification of the juvenile's probation was made within a reasonable time after its expiration. Therefore, the order of the juvenile court is

Affirmed.

Judge McGEE concurs.

Judge BIGGS concurs in the result with a separate opinion.

Report per Rule 30(e).

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BIGGS, Judge concurring in the result with separate opinion.

It is well settled that "[w]here a panel of the Court of Appeals has decided the same issue, albeit in a different case, a subsequent panel of the same court is bound by that precedent, unless it has been is overturned by a higher court." *In the Matter of Appeal from Civil Penalty*, 324 N.C. 373, 384, 379 S.E.2d 30, 37 (1989). Thus I am bound by this Court's decision in *In Re T.J.*, -- N.C. --, 553 S.E.2d 418 (2001) to concur in this opinion.

N.C.G.S. § 7B-2510(c) (1999) specifically provides:

An order of probation shall remain in force for a period not to exceed one year from the date entered. Prior to expiration of an order of probation, the court may extend it for an additional period of one year after a hearing, if the court finds that the extension is necessary to protect the community or to safeguard the welfare of the juvenile.

"When the language of a statute is clear and unambiguous, there is no room for judicial construction.'" *Occaneechi Band v. N.C. Commission of Indian Affairs*, -- N.C. App. --, -- S.E.2d -- (filed 21 August 2001) (quoting *State v. Green*, 348 N.C. 588, 596, 502

S.E.2d 819, 824 (1998)). I believe that only the legislature can cure what the majority has attempted through judicial construction. However, for the reason outlined above, I must concur.