

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA01-733

NORTH CAROLINA COURT OF APPEALS

Filed: 2 April 2002

STATE OF NORTH CAROLINA

v.

ALONZO ZUMA MCCOLLUM

Rockingham County
Nos. 99 CRS 5774, 9800,
9801

Appeal by defendant from judgments entered 8 March 2001 by Judge Peter M. McHugh in Rockingham County Superior Court. Heard in the Court of Appeals 18 March 2002.

Attorney General Roy Cooper, by Special Deputy Attorney General James A. Wellons, for the State.

Walker, Melvin & Berger, by P. Kevin Berger, for defendant appellant.

McCULLOUGH, Judge.

On 23 May 2000, defendant pled guilty (pursuant to a plea agreement) to two counts of felony possession of cocaine, two counts of sale of cocaine and two counts of possession with intent to sell or deliver cocaine. Defendant was sentenced to 6-8 months' imprisonment for the possession charges and two terms of 20-24 months' imprisonment on the remaining charges, all sentences to be served consecutively. The trial court suspended defendant's sentences and placed him on supervised probation for 60 months.

On 12 January 2001, probation violation reports were filed,

alleging that defendant had violated his probation. According to the allegations, defendant violated the monetary conditions of his probation, tested positive for marijuana and cocaine, and violated curfew. On 8 March 2001, a probation violation hearing was held in Rockingham County Superior Court. At the hearing, defendant admitted violating his probation. The trial court found that defendant violated his probation without lawful excuse, revoked his probation, and activated his suspended sentences. Defendant appealed.

Defendant's sole argument on appeal is that the trial court abused its discretion in allowing his sentences to run consecutively. Defendant argues the trial court had the authority to modify the initial sentence imposed and failed to do so. By failing to modify the initial sentences to run concurrently instead of consecutively, defendant argues the trial court abused its discretion. Specifically, defendant asserts that the trial court "systematically invoked the suspended sentence without considering modification, thereby resulting in an arbitrary decision." We do not agree.

It is "within the authority and discretion of the judge revoking defendant's probation to run the sentence either concurrently or consecutively." *State v. Campbell*, 90 N.C. App. 761, 763, 370 S.E.2d 79, 80, *appeal dismissed and disc. review denied*, 323 N.C. 367, 373 S.E.2d 550 (1988); and N.C. Gen. Stat. § 15A-1344(d) (1999). In the case *sub judice*, the trial court heard allegations that defendant violated the monetary conditions

of his probation, used marijuana and cocaine, and violated curfew several times. Defendant admitted to those violations and offered no excuse for his drug use or curfew violations. The trial court determined that defendant willfully violated his probation without lawful excuse and determined that his suspended sentences be activated. There is no indication in the record that the trial court believed it was bound by defendant's original sentence. See *State v. Partridge*, 110 N.C. App. 786, 431 S.E.2d 550 (1993); *State v. Brooks*, 105 N.C. App. 413, 413 S.E.2d 312 (1992); and *State v. Thomas*, 85 N.C. App. 319, 354 S.E.2d 891 (1987). Accordingly, we conclude there was no abuse of discretion.

Although there is no error necessitating reversal, there is what appears to be a clerical error in one of the judgments. In 99 CRS 5774, defendant was originally sentenced to a term of 6-8 months' imprisonment. Upon revocation of defendant's probation, the trial court activated defendant's suspended sentences. The transcript indicates no intention by the trial court to increase defendant's sentences. Instead, the transcript is clear that the trial court merely intended to activate the sentences originally imposed. However, the judgment upon revocation of probation indicates a term of 20-24 months' imprisonment. Accordingly, the matter should be remanded to the trial court for correction of the judgment to reflect a term of 6-8 months' imprisonment, said term to run consecutively to the term of imprisonment set forth in 99 CRS 9800.

No error; remanded for correction of a clerical error.

Chief Judge EAGLES and Judge TIMMONS-GOODSON concur.

Report per Rule 30(e).