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NO. COA01-765

NORTH CAROLINA COURT OF APPEALS

Filed: 21 May 2002

STATE OF NORTH CAROLINA

v.

WILLIAM LENOIR

Buncombe County  
Nos. 91 CRS 3669;  
91 CRS 14539-40

Appeal by defendant from judgment entered 1 February 2001 by Judge Marlene Hyatt in Superior Court, Buncombe County. Heard in the Court of Appeals 17 April 2002.

*Attorney General Roy Cooper, by Assistant Attorney General June S. Ferrell, for the State.*

*Assistant Public Defender M. LeAnn Melton, for the defendant-appellant.*

WYNN, Judge.

Defendant appeals from the trial court's 1 February 2001 entry of judgment and commitment upon revocation of his probation. We find no merit in his appeal.

On 11 July 1994, defendant pled guilty to felonious incest, felonious failure to appear, taking indecent liberties with a minor and misdemeanor breaking or entering. The trial court sentenced him to a thirteen-year imprisonment term on the incest charge, a ten-year suspended sentence on the remaining consolidated offenses, and a five-year period of supervised probation. Although the transcript of the hearing indicated that the trial judge ordered

the period of probation to commence at the expiration of the active imprisonment term, the trial judge failed to note on the judgment when the period of probation would begin. However, the special conditions of probation required defendant to report to probation within thirty-six hours of his release from the Department of Corrections.

In September 2000, defendant's probation officer reported that defendant had violated his probation by testing positive for cocaine on 1 September 2000. On 11 November 2000, the State moved to modify the 11 July 1994 judgment to reflect that defendant's probationary sentence ran consecutively to the active sentence imposed on the incest charge. However, defendant moved to dismiss the probation violation, contending that his five-year probation period had run concurrently with his active sentence, and had expired on 11 July 1999. After a hearing on the motions, Judge Ronald K. Payne entered a corrected judgment dated 11 December 2000 indicating that defendant's probation began when he was paroled or otherwise released from incarceration on the incest charge. Defendant did not appeal from that corrected judgment.

On 1 February 2001, defendant again moved to dismiss the probation violation; that motion, as well as the 14 November 2000 motion to dismiss, was denied by the trial court. Thereafter, upon conducting a probation violation hearing, the trial court revoked defendant's probation and activated his suspended sentence. From that judgment, the defendant appealed to this court.

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Preliminarily, it should be noted that defendant petitioned this Court on 12 June 2001 for a *writ of certiorari*, contending that Judge Payne's 11 December 2000 order erroneously modified the 11 July 1994 suspended sentence judgment. This Court denied defendant's petition for *writ of certiorari*.

In light of this Court's denial of his petition to review the judgment of 11 December 2000, we find no merit in defendant's first assignment of error because it is premised on his unsuccessful desire to challenge the 11 December 2000 order. We have further examined defendant's remaining assignments of error which likewise contend that defendant's probationary period ended in 1999 and find them to be wholly without merit.

Affirmed.

Judges McCULLOUGH and BIGGS concur.

Report per Rule 30(e).