

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA03-1432

NORTH CAROLINA COURT OF APPEALS

Filed: 19 October 2004

STATE OF NORTH CAROLINA

v.

Cleveland County
No. 02 CRS 055196

SHAWN PATRICK JAMES

Appeal by defendant from judgment entered 21 May 2003 by Judge Richard L. Doughton in Cleveland County Superior Court. Heard in the Court of Appeals 31 August 2004.

Attorney General Roy Cooper, by Assistant Attorney General Patricia A. Duffy, for the State.

Allen W. Boyer for the defendant.

TIMMONS-GOODSON, Judge.

Shawn Patrick James ("defendant") appeals his conviction of impaired driving. For the reasons stated herein, we dismiss the appeal.

The State's evidence at trial tended to show that defendant was stopped and charged by State Trooper Kenneth E. Moore ("Trooper Moore") after the trooper observed defendant driving on the fog line, the solid white line on the far right side of the road. Upon approaching the car, Trooper Moore observed that there was a "strong odor of alcohol in the vehicle," and that defendant had "red, glassy eyes." Trooper Moore arrested defendant and

transported him to the Law Enforcement Center where he submitted to an Intoxilyzer test and several performance tests. Defendant was charged and found guilty of Driving While Impaired.

The trial court ordered defendant to serve a suspended sentence of sixty days in the Department of Corrections, and placed defendant on supervised probation for a period of eighteen months under all regular conditions of probation as well as the following special conditions: defendant was ordered to complete twenty-four hours of community service within forty-five days; defendant was ordered not to "use, possess, or control any illegal or controlled substance unless it has been prescribed for the Defendant" during the term of his probation; defendant was also ordered not to "use, possess, or consume any alcohol during this period." Defendant requested a limited driving privilege during his probation. The trial court denied defendant's request. It is from this conviction that defendant appeals.

The issues presented on appeal are whether the trial court erred by (I) denying defendant limited driving privileges; and (II) imposing a condition of probation that defendant not use, possess or consume alcoholic beverages. The dispositive issue is whether the questions raised by defendant were properly preserved for appellate review. We note, and defendant concedes, that defense counsel failed to object to these matters at trial. We further note that these issues are not reviewable for plain error, which is reserved for appellate review of jury instructions and evidentiary

rulings. See *State v. Atkins*, 349 N.C. 62, 81, 505 S.E.2d 97, 109 (1998) cert. denied, *Atkins v. North Carolina*, 526 U.S. 1147, 143 L.Ed.2d 1036 (1999). Defendant argues that these issues are preserved for appeal because the trial court violated a statutory mandate. We disagree.

Defendant first argues that "the trial court . . . violated the statutory mandate of N.C. G.S. Sec. 20-179[.]3(a) and (b) by refusing to allow the defendant to show just cause why he is eligible for a limited driving privilege." We disagree.

General Statutes sections 20-179.3(a) and (b) provide in pertinent part as follows:

(a) Definition of Limited Driving Privilege. - A limited driving privilege is a judgment issued in the discretion of a court for good cause shown authorizing a person with a revoked driver's license to drive for essential purposes related to any of the following:

- (1) His employment.
- (2) The maintenance of his household.
- (3) His education.
- (4) His court-ordered treatment or assessment.
- (5) Community service ordered as a condition of the person's probation.
- (6) Emergency medical care.

(b) Eligibility. -

- (1) A person convicted of the offense of impaired driving under G.S. 20-138.1 is eligible for a limited driving privilege if:

- a. At the time of the offense he held either a valid driver's license or a license that had been expired for less than one year;
- b. At the time of the offense he had not within the preceding seven years been convicted of an offense involving impaired driving;
- c. Punishment Level Three, Four, or Five was imposed for the offense of impaired driving;
- d. Subsequent to the offense he has not been convicted of, or had an unresolved charge lodged against him for, an offense involving impaired driving; and
- e. The person has obtained and filed with the court a substance abuse assessment of the type required by G.S. 20-17.6 for the restoration of a drivers license.

(2003).

Our review of the record on appeal reveals that defendant was not eligible for a limited driving privilege because at the time of trial defendant had not "obtained and filed with the court a substance abuse assessment of the type required by G.S. 20-17.6 for the restoration of a drivers license" as required by § 20-179.3(b)(1)e. Because defendant was not eligible for a limited driving privilege, we conclude that he was not entitled to the opportunity to show just cause. For this reason we hold that the trial court did not err by denying defendant limited driving privileges.

Defendant also argues that the trial court violated a statutory mandate by ordering defendant not to use, possess or consume alcohol. We disagree.

General Statutes section 15A-1343(b1) (10) provides that "[i]n addition to the regular conditions of probation specified in subsection (b), the court may, as a condition of probation, require that during the probation the defendant . . . [s]atisfy any other conditions determined by the court to be reasonably related to his rehabilitation." (2003).

The trial court's order that defendant not use, possess or consume alcohol is reasonably related to defendant's rehabilitation in that it prohibits defendant from engaging in conduct that could reasonably lead to further alcohol-related offenses. Accordingly, we conclude that the trial court's order violates no statutory mandate. Defendant's assertion that his issues were properly preserved for appeal is overruled and the appeal is dismissed.

Dismissed.

Judges HUNTER and McCULLOUGH concur.

Report per Rule 30(e).