

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA03-470

NORTH CAROLINA COURT OF APPEALS

Filed: 7 September 2004

STATE OF NORTH CAROLINA

v.

Rockingham County  
No. 02 CRS 5113

CHRISTOPHER JASON HILTON,

Appeal by defendant from judgment entered 18 October 2002 by Judge W. Douglas Albright in Rockingham County Superior Court. Heard in the Court of Appeals 9 August 2004.

*Attorney General Roy Cooper, by Assistant Attorney General Martin T. McCracken, for the State.*

*Craig M. Blitzer, for defendant-appellant.*

TIMMONS-GOODSON, Judge.

Defendant pled guilty in Forsyth County Superior Court on 13 May 1998 to one count of trafficking by possession of cocaine and one count of conspiracy to traffic in cocaine. The court imposed a sentence of a minimum term of 35 months and a maximum term of 42 months. The court suspended the sentence and placed defendant on supervised probation for 60 months. As a condition of probation, the court ordered defendant to pay a fine, fees and court costs in the total amount of \$52,305.00. Supervision of defendant was transferred from Forsyth County to Rockingham County. On 5 August 2002, defendant's Rockingham County probation officer filed a

violation report alleging that defendant was in arrears in payment of the monetary condition of probation by the amount of \$5,350.00. At the conclusion of a hearing on 18 October 2002, the court concluded that defendant willfully and without lawful excuse committed the alleged violation of probation. The court revoked probation and activated the sentence.

Defendant argues the court erred by revoking probation on the sole ground that he failed to make monetary payments. He asserts that the court failed to make findings of fact as to the willfulness of defendant's violation. He contends the court disregarded the fact that defendant had paid \$9,700.00 toward the monetary condition of probation.

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, 521, 353 S.E.2d 250, 253 (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, 567, 328 S.E.2d 833, 835 (1985). When the defendant does offer evidence of his ability or inability to comply with a condition of probation, the court must make findings

of fact which show that it considered and evaluated this evidence. *State v. Williamson*, 61 N.C. App. 531, 535, 301 S.E.2d 423, 426 (1983). The judge's finding of a willful violation, if supported by competent evidence, will not be disturbed on appeal in the absence of a manifest abuse of discretion. *State v. Guffey*, 253 N.C. 43, 45, 116 S.E.2d 148, 150 (1960).

In the case at bar, Judge Albright made specific findings of fact that defendant failed to make reasonable efforts to tender payments in a timely manner; that defendant has had the financial capability to comply with the monetary condition of probation; that defendant has been employed since 26 September 2002, earning \$10.00 per hour; and that defendant has made no payments toward the monetary condition of probation. The evidence at the hearing shows that defendant has not made any payments since March 2001; that payments made prior to that time had been made by defendant's father and grandmother; and that during the period of probation, defendant had odd jobs earning money but defendant did not make any payments. The foregoing evidence shows a willful failure on defendant's part to take personal responsibility for satisfying the monetary condition of probation. "Probation is an act of grace by the State to one convicted of a crime." *State v. Freeman*, 47 N.C. App. 171, 175, 266 S.E.2d 723, 725, *disc. review denied*, 301 N.C. 99, 273 S.E.2d 304 (1980). A person on probation "carries the keys to his freedom in his willingness to comply with the court's sentence." *State v. Robinson*, 248 N.C. 282, 285, 103 S.E.2d 376, 379 (1958). We conclude the court did not abuse its discretion by

revoking probation and activating the sentence.

Defendant also argues that the court violated his rights to equal protection under the United States and North Carolina Constitutions by revoking his probation based solely upon his failure to comply with monetary conditions of probation. Under this assignment of error defendant does not provide a transcript or record page reference indicating that he made this constitutional argument to the trial court. A constitutional argument not raised in the trial court will not be considered for the first time on appeal. *State v. Lloyd*, 354 N.C. 76, 86-87, 552 S.E.2d 596, 607 (2001). Not having been properly preserved for appellate review, this assignment of error is dismissed.

The judgment is affirmed.

Affirmed.

Judges CALABRIA and ELMORE concur.

Report per Rule 30(e).