

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA04-232

NORTH CAROLINA COURT OF APPEALS

Filed: 19 October 2004

STATE OF NORTH CAROLINA

v.

Richmond County
No. 01 CRS 53392

STACY RYAN SMITH

Appeal by Defendant from judgment entered 2 June 2003 by Judge W. David Lee in Superior Court, Richmond County. Heard in the Court of Appeals 11 October 2004.

Attorney General Roy Cooper, by Assistant Attorney General Kristine L. Lanning and Special Deputy Attorney General William P. Hart, for the State.

William D. Spence for defendant-appellant.

WYNN, Judge.

Defendant Stacy Ryan Smith appeals from judgment of the trial court revoking his probation and activating his suspended sentence. Defendant contends there was insufficient evidence that the alleged probation violations were willful and without lawful excuse. Defendant argues his compliance with the conditions of probation substantially improved, and that the trial court failed to make sufficient findings of fact. For the reasons stated herein, we affirm the judgment of the trial court.

The procedural and factual history of the instant appeal is as

follows: On 28 October 2002, Defendant pled guilty pursuant to a plea agreement to assault inflicting serious injury. Defendant was sentenced to a term of nineteen to twenty-three months' imprisonment. The trial court suspended Defendant's sentence and placed him on supervised probation for thirty-six months.

On 18 February 2003, Defendant's probation officer filed a probation violation report alleging Defendant had failed to comply with the terms of his probation. Specifically, the report alleged Defendant: (1) tested positive for cocaine on 4 February 2003; (2) failed to complete community service; (3) failed to report to his probation officer; (4) was away from his residence on specified dates; (5) was in violation of the monetary obligation of his probation; (6) failed to pay court-ordered supervision fees; (7) failed to pay child support; (8) failed to obtain full-time employment; and (9) failed to comply with his recommended treatment program. On 11 April 2003, a second probation violation report was filed. The report alleged Defendant: (1) failed to report to his probation officer; (2) was away from his residence on specified dates; and (3) had been charged with a criminal offense.

On 5 May 2003, the trial court held a probation violation hearing in Superior Court, Richmond County. Defendant denied the allegations in the probation violation report. Defendant testified that transportation problems prevented him from complying with several conditions of his probation; that he called when he could not make his appointments with his probation officer; that he had no income and thus could not pay all his obligations; and that he

was employed part-time at a poultry farm. The trial court found there were reasonable grounds to believe that Defendant had violated his probation. In particular, the trial court found that: (1) Defendant had used an illegal substance; (2) failed to report to his probation officer; (3) was away from his residence on specified dates; (4) failed to obtain full-time employment; and (5) failed to comply with his recommended treatment. However, the trial court continued judgment to give Defendant the opportunity to "prove" himself.

On 2 June 2003, the trial court held another hearing on Defendant's probation violations. The trial court found that since the prior hearing Defendant had: (1) failed to obtain full-time employment; (2) tested positive for cocaine use; and (3) failed to complete his community service. Accordingly, based on its findings at the hearing, as well as the hearing on 5 May 2003, the trial court revoked Defendant's probation and activated his suspended sentence. Defendant appealed.

Defendant argues the trial court erred in revoking his probation on the grounds that: (1) his failure to comply with the conditions of probation was not willful; (2) his compliance substantially improved; and (3) the trial court failed to make sufficient findings as to each condition it deemed violated. We affirm the judgment of the trial court.

Defendant first argues there was insufficient evidence for the trial court to find that his probation violations were willful and

without lawful excuse. We do not agree. This Court has stated:

Any violation of a valid condition of probation is sufficient to revoke [a] defendant's probation. All that is required to revoke probation is evidence satisfying the trial court in its discretion that the defendant violated a valid condition of probation without lawful excuse. The burden is on [the] defendant to present competent evidence of his inability to comply with the conditions of probation; and that otherwise, evidence of [the] defendant's failure to comply may justify a finding that [the] defendant's failure to comply was wilful(sic) or without lawful excuse.

State v. Tozzi, 84 N.C. App. 517, 521, 353 S.E.2d 250, 253 (1987) (citations omitted).

In the case *sub judice*, it was alleged in the 18 February 2003 violation report that Defendant violated his probation by being away from his residence on 15 December 2002, and again on 9 and 11 January 2003. Defendant's probation officer testified that he attempted to make contact with Defendant at home on those dates, but that Defendant was not there. Defendant offered no evidence as to his whereabouts on those dates. 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). Accordingly, we conclude it was within the trial court's discretion to revoke Defendant's probation. Because there was sufficient grounds to revoke Defendant's probation, we need not consider Defendant's remaining probation violations.

Defendant next argues the trial court erred by revoking his probation because he had substantially improved. We do not agree.

Initially, we note that Defendant cites no authority in support of this contention, in violation of our Rules of Appellate Procedure. See N.C. R. App. P. 28(b)(5). Nonetheless, even assuming *arguendo* that Defendant's argument is properly before the Court, it is wholly without merit. At the June hearing, Defendant admitted to using cocaine after he was given a second chance by the trial court. Accordingly, the trial court could properly conclude that there was no substantial improvement in Defendant's probationary efforts.

Finally, Defendant argues the trial court failed to make sufficient findings of fact to show that it had weighed and considered his evidence. Defendant contends he presented competent evidence that his probation violations were not willful and without lawful excuse, and that the trial court was required to make findings to show that it considered his evidence. We are not persuaded.

The trial court found that based on the record, as well as the evidence presented by the parties, Defendant had violated the terms of his probation as alleged in the probation violation report. When the court introduces its findings with words such as "based upon the evidence presented," the court sufficiently shows that it considered all the evidence, including evidence presented by the defendant. *State v. Williamson*, 61 N.C. App. 531, 535, 301 S.E.2d 423, 426 (1983). The court is not required to make specific findings of fact regarding each of the defendant's allegations. *Id.* This Court has stated:

Although the Judge could have been more explicit in the findings by stating that he had considered and evaluated defendant's evidence . . . and found it insufficient to justify breach of the probation condition, we hold that his failure to do so does not constitute an abuse of discretion. *It would not be reasonable to require that a judge make specific findings of fact on each of defendant's allegations tending to justify his breach of conditions.*

Id. (emphasis added). Accordingly, we affirm the judgment of the trial court.

Affirmed.

Judges TYSON and GEER concur.

Report per Rule 30(e).