

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA05-1292

NORTH CAROLINA COURT OF APPEALS

Filed: 4 April 2006

STATE OF NORTH CAROLINA

v.

Forsyth County
No. 04 CRS 061976

NATHAN WALLACE JETER, JR.

Appeal by defendant from judgment entered 6 June 2005 by Judge Ronald E. Spivey in Superior Court, Forsyth County. Heard in the Court of Appeals 20 March 2006.

Attorney General Roy Cooper, by Assistant Attorney General Kathleen U. Baldwin, for the State.

Brannon Strickland, PLLC, by Marlet M. Edwards, for defendant-appellant.

McGEE, Judge.

Nathan Wallace Jeter, Jr. (defendant) pled guilty to possession of a firearm by a felon on 3 January 2005. Defendant's sentence was suspended and he was placed on supervised probation for twenty-four months. A probation violation report was filed on 12 May 2005, alleging that defendant had failed to comply with the terms of his probation. Specifically, the report alleged that defendant had: (1) failed to report to his probation officer; (2) was in arrears on his monetary obligations; and (3) had violated curfew.

A probation violation hearing was held on 6 June 2005. Defendant admitted to the violations but denied their willfulness. Defendant's probation officer testified that defendant was in a wheelchair, and that he agreed to go to defendant rather than have defendant report to him. However, he further testified that he had "trouble finding [defendant] at home at night" and that he could not "get [defendant] to stay at home." The probation officer also testified defendant was in arrears on his monetary obligations, but had paid \$200.00 prior to court.

Defendant testified he did not know how much he was supposed to pay, and did not know about a payment plan. Defendant further testified that his probation officer did not visit, and that he was at home. The trial court found that defendant had violated his probation as alleged in the violation report. The trial court revoked defendant's probation and activated his suspended sentence. Defendant appeals.

Defendant argues the trial court abused its discretion by revoking his probation. Defendant claims there was a misunderstanding regarding his monetary obligation. Defendant additionally cites the probation officer's testimony that defendant did not have to report for appointments, and claims that he was at home on the alleged violation dates.

In *State v. Tozzi*, 84 N.C. App. 517, 521, 353 S.E.2d 250, 253 (1987) (citations omitted), our Court stated:

Any violation of a valid condition of probation is sufficient to revoke 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 defendant to present competent evidence of his inability to comply with the conditions of probation; and that otherwise, evidence of defendant's failure to comply may justify a finding that defendant's failure to comply was wilful or without lawful excuse.

In the case before us, it was alleged that defendant violated his probation by violating his curfew. Defendant admitted to violating curfew and admitted that on one of those occasions he was "at [his] aunt's." A defendant has the burden of showing excuse or lack of willfulness and if the defendant fails to carry this burden, 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). The trial court apparently concluded that defendant's testimony that he was at his aunt's home did not satisfy this burden. We agree. 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, consideration of defendant's remaining probation violations are moot. We affirm the trial court's revocation of defendant's probation.

Affirmed.

Judges WYNN and HUNTER concur.

Report per Rule 30(e).