

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA05-911

NORTH CAROLINA COURT OF APPEALS

Filed: 4 April 2006

STATE OF NORTH CAROLINA

v.

ELLIOT ARNAZ MOORE

Buncombe County  
Nos. 00 CRS 9120-21,  
00 CRS 53714-15

Appeal by defendant from judgment entered 9 December 2004 by Judge James L. Baker, Jr. in Buncombe County Superior Court. Heard in the Court of Appeals 27 February 2006.

*Attorney General Roy Cooper, by Assistant Attorney General Laura J. Gendy for the State.*

*Jon W. Myers for defendant-appellant.*

ELMORE, Judge.

On 4 January 2001 defendant pled guilty to second degree kidnapping and breaking or entering. Defendant's sentence was suspended and he was placed on supervised probation for thirty months.

On 28 August 2002 a probation violation report was filed alleging that defendant had failed to comply with the terms of his probation. Specifically, the report alleged that defendant: (1) was in arrears of the monetary obligation of his probation; (2) failed to show proof that he had passed his General Education

Development Test or received a high school diploma within the specified time frame; (3) failed to maintain employment; (4) failed to receive a substance abuse assessment; and (5) had been charged with sell/delivery of crack cocaine. On the same day, an order for defendant's arrest was issued. The order listed the Greene County Detention Center in Greenville, Tennessee, as defendant's address. On 9 September 2002 defendant began serving a sentence for a conviction on drug charges in Tennessee. Defendant was paroled from his Tennessee conviction on 17 November 2004. Defendant was served with the North Carolina order for arrest on the same day.

On 9 December 2004 a probation violation hearing was held in Buncombe County Superior Court. Defendant admitted the allegations in the violation report. Defendant's probation was revoked and his suspended sentence activated. Defendant appeals.

Defendant argues that the trial court lacked jurisdiction to revoke his probation after the expiration of his probationary period. Defendant contends that the State failed to comply with N.C. Gen. Stat. § 15A-1344(f). We agree.

N.C. Gen. Stat. § 15A-1344(f) (2005) provides that:

The court may revoke probation after the expiration of the period of probation if:

(1) Before the expiration of the period of probation the State has filed a written motion with the clerk indicating its intent to conduct a revocation hearing; and

(2) The court finds that the State has made reasonable effort to notify the probationer and to conduct the hearing earlier.

*Id.* Here, the trial court conducted a hearing on 9 December 2004,

after the expiration of defendant's period of probation had expired. Pursuant to *State v. Camp*, 299 N.C. 524, 528, 263 S.E.2d 592, 594-95 (1980), in order to revoke the defendant's probation after his probationary period has expired, the trial court must make findings that the State had "made reasonable effort . . . to conduct the hearing earlier." *Id.* at 528, 263 S.E.2d at 595; see also *State v. Hall*, 160 N.C. App. 593, 586 S.E.2d 561 (2003). Here, however, the trial court did not make any findings, and there is no evidence in the record to support a finding that the State made a reasonable effort to conduct the hearing earlier. Accordingly, pursuant to *Camp* and *Hall*, we conclude that "jurisdiction was lost by the lapse of time and the court had no power to enter a revocation judgment against defendant." *Hall*, 160 N.C. App. at 594, 586 S.E.2d at 561 (*quoting Camp*, 299 N.C. at 528, 263 S.E.2d at 595). Accordingly, the judgment appealed from is arrested.

Judgment arrested.

Judges McCULLOUGH and TYSON concur.

Report per Rule 30(e).