

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA05-991

NORTH CAROLINA COURT OF APPEALS

Filed: 6 June 2006

STATE OF NORTH CAROLINA

v.

Davidson County
No. 03 CRS 58359

PATRICIA MONROY

Appeal by defendant from judgment entered 13 January 2005 by Judge W. David Lee in Davidson County Superior Court. Heard in the Court of Appeals 29 May 2006.

Attorney General Roy Cooper, by Assistant Attorney General Mary S. Mercer, for the State.

Eric A. Bach, for defendant appellant.

McCULLOUGH, Judge.

Defendant appeals from a judgment entered upon revocation of her probation. We affirm.

On 23 June 2004, defendant entered pleas of guilty to charges of felonious breaking and entering and larceny. The trial court consolidated the offenses for judgment, sentenced defendant to a suspended term of eleven to fourteen months' imprisonment, and placed her on supervised probation for two years.

In a report filed 7 December 2004, defendant's probation officer charged her with the following violations of the terms and conditions of probation: (1) failure to make any payments toward

the monetary conditions of her probation; (2) failure to pay her monthly probation supervision fee; (3) non-compliance with the rules of the Day Reporting Center by (a) "attempting to remove cas[h] from the cash drawer" during a substance abuse treatment session; (b) "fail[ing] to attend[] skills classes as instructed[;]" (c) "fail[ing] to provide daily job search lists[;]" (d) "fail[ing] to be at approved location during curfew hours[;]" and (e) "fail[ing] to enroll in an education program."

At the revocation hearing, Davidson County Probation Officer Melissa Bailey testified regarding defendant's several violations. Although allowing for "some medical conditions" that may have prevented defendant from satisfying the monetary conditions of probation, Bailey noted that "she was still to come to our [bi-weekly] job skills classes, which she did not. Sometimes she didn't have transportation, other times she just didn't show up." Defendant missed "more than half of" the classes, and did not call Bailey to tell her that she would not be able to attend. Moreover, Bailey provided defendant with transportation to the classes, but "she was taken off of the transportation van due to her not being at the residence where we sent the van . . . on two separate occasions." Bailey also relayed information from an instructor working for defendant's substance abuse provider, who discovered defendant with her hand in the provider's cash box during a class. Defendant was not at her residence on one occasion when Bailey visited her during curfew. Defendant later explained to Bailey that "she had moved back to her prior residence." Finally,

defendant failed to enroll in courses to get her high school equivalency degree, as required by the Day Reporting Center.

Defendant testified that her probation officer would not allow her to accept the only jobs she could find. She had applied for disability based upon carpal tunnel syndrome, bone spurs in her neck, and depression but had been turned down "two or three times[.]" Defendant had no knowledge of the cash box incident and had missed only two life skills classes for medical reasons. She did not turn in her daily job search lists due to the futility of searching for a job without a driver's license or car. Regarding the curfew violation, defendant averred, "One time in six months I was not at the appropriate place." When asked about her failure to enroll in classes toward her degree, she explained, "I checked into it, [but] I could not even start doing any classes until December at that point because I guess I waited too long trying to get everything else in order with my health issues and then the new classes were going to start in January." When asked why she did not follow through with registering in December, she said, "I was really on a tight schedule."

The court announced its findings in open court, as follows:

I am reasonably satisfied in my discretion that this probationer has willfully, without lawful excuse, violated each condition of her probation as set out in paragraphs one through three of the violation report. That each of those violations is sufficient in and of itself . . . to permit revocation of her suspended sentence. Had there been some payments, some efforts in some of this that looked like a sincere effort, I would view it differently. I don't see any substantial

effort to comply.

The judgment entered by the court includes findings that she willfully and without a valid excuse violated each condition alleged in the violation report, and that "[e]ach violation is, in and of itself, a sufficient basis upon which this Court should revoke probation and activate the suspended sentence."

On appeal, defendant argues that the trial court "fail[ed] to make adequate findings concerning the specific violation committed by . . . defendant and the violation being willful and without lawful excuse." She notes she offered evidence of her inability to pay the costs of her probation due to her physical disabilities and depression, and of the probation officer's refusal to approve two jobs located by defendant. In light of this evidence, defendant contends that the trial judge "failed to make the necessary findings of fact concerning [her] violation of probation being willful." She avers that "the lack of findings of fact in this case requires that [her] case be reversed" and remanded for rehearing.

Defendant's argument is not properly before this Court, inasmuch as it does not correspond to any assignment of error set forth by defendant in the record on appeal. Under N.C.R. App. P. 10(a), "the scope of review on appeal is confined to a consideration of those assignments of error set out in the record on appeal[.]" The assignment of error cited by defendant in her appellant's brief reads as follows:

The trial court erred in revoking the

defendant's probation when the State failed to establish that the defendant's violations of probation were willful. The Defendant asserts as a legal basis: Chapter 15A of the North Carolina General Statutes, the Due Process Clause of the Fifth Amendment of the United States Constitution, and the N.C. Constitution Art. I, §§ 19, 21, 23, and 28. The Defendant asserts constitutional error, structural error, prejudicial error, or in the alternative plain error.

(Emphasis added.) This assignment of error challenges the sufficiency of the State's evidence on the issue of willfulness. As set forth above, however, defendant's briefed argument and citations to authority concern the sufficiency of the trial court's findings of fact on the issue of willfulness. Because defendant's assignment of error does not support the argument found in her brief to this Court, "this matter is not properly presented for our consideration." *State v. Williamson*, 333 N.C. 128, 138, 423 S.E.2d 766, 771 (1992); *Koufman v. Koufman*, 330 N.C. 93, 97-98, 408 S.E.2d 729, 731 (1991)); *accord Bustle v. Rice*, 116 N.C. App. 658, 659, 449 S.E.2d 10, 11 (1994) ("[W]here the issue presented in the appellant's brief does not correspond to a proper assignment of error, the matter is not properly considered by the appellate court.").

Although it is not cited in her appellant's brief, we note defendant's fourth assignment of error faults the trial court for "making [in]sufficient findings regarding which specific terms of probation that [she] had violated without excuse." We read this assignment of error as asserting a failure by the court to identify which of defendant's specific acts it found to be unexcused, rather

than a lack of sufficient findings to establish that her violations were willful. To the extent this fourth assignment of error can be broadly construed to encompass defendant's argument on appeal, we observe that she adduced no evidence tending to justify her attempt to take money from the cash box, her violation of curfew, or her failure to enroll in classes toward her high school degree. It is well established that the violation of even a single condition of probation provides sufficient grounds for the trial court to revoke a defendant's probation. *See, e.g., State v. Braswell*, 283 N.C. 332, 337, 196 S.E.2d 185, 188 (1973). Accordingly, because the court found each of defendant's violations to be sufficient to revoke her probation, the lack of particularized findings on the willfulness of her failure to maintain employment or to satisfy the monetary conditions of probation was harmless. *See* N.C. Gen. Stat. § 15A-1443(a) (2005).

The record on appeal contains additional assignments of error which are not addressed by defendant in her brief to this Court. Pursuant to N.C.R. App. P. 28(b)(6), we deem them abandoned.

Affirmed.

Judges HUDSON and STEELMAN concur.

Report per Rule 30(e).