

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA06-1251

NORTH CAROLINA COURT OF APPEALS

Filed: 1 May 2007

STATE OF NORTH CAROLINA

v.

Cumberland County
Nos. 02 CRS 52695-96

MAJOR JOHN WRIGHT

Appeal by defendant from judgments entered 20 February 2006 by Judge Gregory A. Weeks in Cumberland County Superior Court. Heard in the Court of Appeals 30 April 2007.

Attorney General Roy Cooper, by Assistant Attorney General Creecy C. Johnson, for the State.

Geoffrey W. Hosford, for defendant-appellant.

LEVINSON, Judge.

On 16 December 2002, defendant pled guilty to two counts of taking indecent liberties with a child and was sentenced to consecutive terms of nineteen to twenty-three months imprisonment. The trial court suspended defendant's sentences and placed him on supervised probation for thirty-six months.

On 16 August 2005, defendant went to the home of Shakira Fisher. Fisher was fifteen years old and was home alone with her two year old sister. Fisher testified that she answered a knock at the door and found defendant standing there with a bag of clothes.

Fisher knew defendant because his "wife was like my grandma." Defendant came into the house and said the bag of clothes were for the baby for church. Fisher testified that defendant put the clothes by the couch and then refused to leave. Defendant told her that her "butt was big" and testified further that he "was grabbing hisself" in "his private parts" and calling me cute."

On 24 August 2005, probation violation reports were filed alleging that defendant had failed to report to his probation officer and had failed to abide by the terms of the sex offender control program. Specifically, the report claimed that defendant violated the conditions that he: (1) participate in a sexual abuse treatment program; (2) not be alone with any minor below the age of eighteen; and (3) not engage in any sexual behavior with a minor below the age of eighteen.

On 20 February 2006, the trial court held a probation violation hearing at which defendant denied the allegations. The trial court found that defendant willfully violated the terms of his probation, finding that "[e]ach violation is, in and of itself, a sufficient basis" to revoke probation. Defendant appeals from the revocation of his probation.

Defendant first argues that there is a clerical error in the judgments and asks the Court to remand the matter for correction. Specifically, defendant notes that the judgments indicate that the trial court found him in violation of all the allegations set out in the violation reports. However, defendant claims the trial court only found him in violation by having been in contact with

minors and engaging in sexual behavior in their presence. We agree, as the trial court specifically stated that he would not rule either on those allegations in the violation report set forth in paragraph 1 or the first allegation included in paragraph 2. Accordingly, we remand for correction of this clerical error.

Defendant next argues that the trial court abused its discretion by revoking his probation because he demonstrated a lawful excuse for violating his probation. Defendant contends the trial court failed to consider his mental state or his explanation for his presence at Fisher's home. Defendant claims that he did not plan the encounter and that Fisher misinterpreted his actions as sexual behavior. Defendant asserts that the trial court failed to make findings that show it considered and evaluated his evidence.

After careful review of the record, briefs and contentions of the parties, we affirm. "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." *State v. Tozzi*, 84 N.C. App. 517, 521, 353 S.E.2d 250, 253 (1987) (citations omitted). Furthermore, the defendant has the burden of showing excuse or lack of wilfulness. If the defendant fails to carry this burden, evidence of failure to comply is sufficient to support a finding that the violation was wilful or without lawful excuse. *Id.* (citing *State v. Crouch*, 74 N.C. App. 565, 567, 328 S.E.2d 833, 835

(1985)).

At the probation hearing, defendant argued that the encounter was unplanned and that Fisher's testimony was exaggerated. Defendant's counsel also argued that the trial court should consider defendant's mental state, citing a letter from Janet O. Cardassi, a licensed psychological associate. Cardassi stated that sometimes defendant would admit to committing sexual abuse, and other times he would deny it. Cardassi also noted that defendant had previously received a concussion and had filed for disability due to seizures and memory loss. However, the trial court apparently concluded that defendant's testimony did not satisfy his burden of showing excuse or lack of wilfulness. See *State v. Williamson*, 61 N.C. App. 531, 535, 301 S.E.2d 423, 426 (1983) ("The trial judge, as the finder of the facts, is not required to accept defendant's evidence as true." (quoting *State v. Young*, 21 N.C. App. 316, 321, 204 S.E.2d 185, 188 (1974))).

The trial court found that based on the record and the evidence presented by the parties, defendant had violated the terms of his probation as alleged in the probation violation reports. The trial court specifically announced at the revocation hearing that defendant had violated the conditions of his probation as alleged in the violation report pertaining to his being in contact with minors and engaging in sexual behavior in their presence. When the court prefaces its findings with words such as "[b]ased upon the evidence presented," the court sufficiently shows that it considered all the evidence, including evidence presented by the

defendant. *Id.* 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. Accordingly, we conclude the trial court did not abuse its discretion by revoking defendant's probation.

Affirmed; remanded for correction of a clerical error.

Judges McCULLOUGH and STEELMAN concur.

Report per Rule 30(e).