

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA06-218

NORTH CAROLINA COURT OF APPEALS

Filed: 5 September 2006

STATE OF NORTH CAROLINA

v.

Johnston County
No. 05 CRS 55935

CHRISTOPHER TITUS JONES

Appeal by defendant from judgment entered 10 October 2005 by Judge Knox V. Jenkins, Jr., in Johnston County Superior Court. Heard in the Court of Appeals 21 August 2006.

Attorney General Roy Cooper, by Assistant Attorney General Bethany A. Burgon, for the State.

Paul T. Cleavenger for defendant-appellant.

CALABRIA, Judge.

Christopher Titus Jones ("defendant") appeals from a judgment entered pursuant to a plea agreement whereby defendant pled guilty to possession with intent to sell or deliver cocaine, and sale or delivery of a Schedule II controlled substance. We find no error.

On 14 September 2005, defendant pled guilty pursuant to a plea agreement to possession with intent to sell or deliver cocaine and sale or delivery of a Schedule II controlled substance. The trial court sentenced defendant to a minimum of 12 months to a maximum of 15 months in the North Carolina Department of Correction. However,

the trial court suspended defendant's sentence and placed him on supervised probation for twenty-four months, with the first six months being intensive probation. On 15 September 2005, Emile R. Lancaster ("Lancaster"), defendant's probation officer, filed a violation report alleging defendant failed to comply with several terms of his probation. First, defendant failed to report to Lancaster as directed. Defendant was "specifically told" to contact Lancaster at 2 p.m. on 14 September 2005, and failed to do so. Second, defendant failed to remain within the jurisdiction of the court. Specifically, defendant "absconded supervision by giving a false address and by not making himself available for supervision."

On 10 October 2005, the trial court held a probation violation hearing. Lancaster testified defendant never contacted her on 14 September 2005 and consequently, the next day she filed a violation report. Defendant testified and denied the allegations in the report. The trial court determined defendant willfully violated the terms of his probationary judgment. Accordingly, the trial court revoked defendant's probation and activated his suspended sentence. Defendant appeals.

Defendant argues there was insufficient evidence for the trial court to determine his probation violations were willful. We disagree. This Court has stated

[a]ny 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.

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

In the instant case, the State alleged defendant violated his probation by not contacting Lancaster and giving a false address. Pursuant to *Tozzi, supra*, we review the trial court's determination defendant willfully violated his probation for an abuse of discretion. Further, defendant must illustrate by competent evidence that he was unable to comply with the probationary conditions. Defendant testified he called Lancaster on 15 September 2005 at 2 p.m. as instructed, but was unable to reach her. Defendant further stated he called Lancaster the next morning and left a message. On cross examination, defendant stated that subsequent to his placement on probation, he was planning on living with his grandmother and gave that address as his residence. However, that evening his grandmother told him that he could not live there. Defendant testified he moved in with his girlfriend on 16 September 2005, but alleged he did not have time to give Lancaster his "new address." Defendant admitted he "wasn't living [at his grandmother's house], but ... was going to do my six months there." He further admitted he had not been living with his grandmother for nearly nine months, but had been living with his girlfriend.

The 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). Here, defendant gave differing accounts of where he lived. Further, though defendant stated he called Lancaster at the required time, he presented no proof the call was made or with whom he spoke. We conclude the trial court did not abuse its discretion in revoking defendant's probation.

Affirmed.

Chief Judge MARTIN and Judge JACKSON concur.

Report per Rule 30(e).