

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA06-316

NORTH CAROLINA COURT OF APPEALS

Filed: 7 November 2006

STATE OF NORTH CAROLINA

v. Moore County  
Nos. 04 CRS 55336;  
JOHNNY COLON LUCK, JR. 05 CRS 50536;  
52036; 52424

Appeal by defendant from judgments entered 13 December 2005 by Judge James M. Webb in Moore County Superior Court. Heard in the Court of Appeals 2 October 2006.

*Attorney General Roy A. Cooper, III, by Special Deputy Attorney General Robert C. Montgomery and Assistant Attorney General Hilda Burnett-Baker, for the State.*

*James M. Bell, for defendant-appellant.*

JACKSON, Judge.

On 6 September 2005, Johnny Colon Luck, Jr. ("defendant") was convicted of two counts of obtaining property by false pretenses and two counts of breaking or entering. Defendant's sentences were suspended and he was placed on supervised probation for thirty-six months.

On 11 November 2005, probation violation reports were filed alleging that defendant had failed to comply with the terms of his probation. Specifically, the reports alleged that defendant: (1) had tested positive for cocaine on 11 October 2005; (2) had failed

to complete any community service; (3) had failed to report to his probation officer; (4) had violated curfew; (5) had absconded; and (6) was in arrears on his monetary obligations.

On 12 December 2005, a probation violation hearing was held in Moore County Superior Court. Defendant admitted the allegations, but denied they were willful. Defendant testified that he had been treated for "personality, anger, [and] mood disorder" and was placed on medication that affected his short-term memory, his ability to focus, and caused physical side effects. He testified that his medication was changed in late October 2005, although he still was having problems with his medication at the time of the hearing. Defendant stated that if placed on the proper medication he would be able to complete his probation. However, the trial court found defendant willfully had violated the terms of his probation. Accordingly, the trial court revoked defendant's probation and activated his suspended sentences. Defendant appeals from the revocation of his probation and the activation of his sentences.

Defendant argues the trial court abused its discretion by revoking his probation because the evidence demonstrated that:

[d]uring the crucial period when he was alleged to be willfully violating the terms of his probation, he was experiencing problems with his medications causing him to have short-term memory loss. His ability to focus was also affected.

Defendant thus argues that his violations were not willful.

After careful review of the record, briefs, and contentions of the parties, we find no error. 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) (internal citations omitted).

In the case *sub judice*, the State alleged that defendant violated his probation by testing positive for cocaine on 11 October 2005. 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). Defendant admitted that he did not comply with the terms of his probation, offering as an excuse that his medication was changed and caused side effects. However, the evidence before the trial court was that his medication was changed in late October, after he tested positive for cocaine. The only excuse offered by defendant as to why he smoked crack cocaine was that he was "frustrated." Accordingly, we conclude it was within the trial court's discretion to revoke defendant's probation.

Because there were sufficient grounds to revoke defendant's probation, we need not consider defendant's remaining probation violations.

No error.

Chief Judge MARTIN and Judges CALABRIA concur.

Report per Rule 30(e).