

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA06-32

NORTH CAROLINA COURT OF APPEALS

Filed: 21 November 2006

STATE OF NORTH CAROLINA

v.

Iredell County  
No. 01 CRS 58200

MICHAEL WAYNE STONER,  
Defendant.

Appeal by defendant from judgment entered 1 August 2005 by Judge Christopher M. Collier in Iredell County Superior Court. Heard in the Court of Appeals 16 October 2006.

*Attorney General Roy Cooper, by Assistant Attorney General Ann Stone, for the State.*

*Brannon Strickland, PLLC, by Robin E. Strickland and Anthony M. Brannon, for defendant-appellant.*

BRYANT, Judge.

Michael Wayne Stoner (defendant) appeals from the revocation of his probation and the activation of his suspended sentence. For the reasons stated below, we affirm the trial court's judgment.

*Facts*

On 18 August 2003, defendant pled no contest to assault with a deadly weapon inflicting serious injury. The trial court sentenced defendant to a term of twenty-three to thirty-seven months imprisonment, then suspended the sentence and placed him on supervised probation for thirty-six months. On 29 May 2005,

defendant's probation officer filed a violation report which alleged that defendant had willfully violated his probation by leaving at "approximately 0912 hrs, . . . his place of residence . . . without having authorized leave time. Defendant returned at 1352 hrs and left again at 1402 hrs. At approximately 1459 hrs, defendant returned to his residence. Probation Officer David Hines left a note on defendant's door at approximately 1110 hrs instructing defendant he had no leave time." On 24 June 2005, defendant's probation officer filed a second violation report which alleged that defendant had willfully violated two conditions of his probation by testing positive for cocaine and by being \$360.00 in arrears on the monetary conditions of his probation.

At a probation violation hearing on 1 August 2005, defendant through his appointed counsel admitted violating his probation. After defendant consented to having the probation officer summarize the matter, the probation officer testified defendant violated his probation on 29 May 2005 by initially leaving his residence without authorized leave time at 9:12 a.m. for three hours and fifty minutes. Probation Officer David Hines left a note on defendant's door at approximately 11:10 a.m. which informed defendant that he had no leave time. Defendant returned at approximately 1:02 p.m., but left again at 2:02 p.m. for about thirteen minutes. The probation officer further testified that defendant tested positive for cocaine on 15 June 2005 and was \$360.00 behind in making payments on the monetary conditions of his probation.

At the conclusion of the hearing, the trial court stated in

open court that it was satisfied in its discretion that defendant had violated the conditions set forth in the two violation reports. After finding that the violations were willful and without lawful excuse and that they had occurred at a time prior to the expiration of defendant's probation, the trial court determined that each violation was sufficient cause for defendant's probation to be revoked and ordered that defendant's suspended sentence be activated. While the trial court's judgment entered that same day incorporated the two violation reports by reference, the judgment only listed the violation contained in the 29 May 2005 violation report. The trial court then found the one violation to be a sufficient basis upon which to revoke the probation and activate the suspended sentence. From the trial court's judgment, defendant appeals.

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Defendant presents two issues on appeal: (I) whether the trial court erred in finding that defendant admitted to violating his probation; and (II) whether the trial court failed to make sufficient findings of fact before revoking defendant's probation, in violation of N.C. Gen. Stat. 15A-1345(e).

*I*

Defendant first contends the trial court erred in finding that he admitted the alleged probation violations. He argues the trial court erroneously relied upon his defense counsel's assertions, and he states he "did not personally admit the violations nor did he waive a hearing." Defendant's arguments are not persuasive.

"Statements of an attorney are admissible against his client provided that they have been within the scope of his authority and that the relationship of attorney and client existed at the time. . . . The burden is upon the client to prove lack of authority to the satisfaction of the court." *State v. Watson*, 303 N.C. 533, 538, 279 S.E.2d 580, 583 (1981) (citations omitted). Because the record contains no indication that defense counsel was acting contrary to defendant's wishes when he admitted the violation of probation, defendant has failed to establish the absence of authority on his attorney's part. This argument is therefore overruled. As for defendant's argument that he did not waive a probation revocation hearing, it is inapposite. The hearing was not waived, but was in fact held by the trial court on 1 August 2005 "to determine whether to revoke or extend probation[.]" N.C. Gen. Stat. § 15A-1345(e) (2005). This argument is without merit.

## II

Defendant next contends the trial court did not articulate sufficient findings of fact to comply with N.C.G.S. § 15A-1345(e) before revoking his probation. He argues "while sufficient evidence may have been presented to the trial court to support proper findings of fact, the court simply failed to articulate findings sufficient to comply with the mandates of N.C. Gen. Stat. § 15A-1345(e)." Defendant's argument is not persuasive.

"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). The State presented competent evidence in the form of the probation officer's testimony as to the violations alleged in the two violation reports. "[T]he burden is on the defendant to present competent evidence of his inability to comply; . . . otherwise, evidence of defendant's failure to comply may justify a finding that defendant's failure to comply was willful or without lawful excuse." *State v. Crouch*, 74 N.C. App. 565, 567, 328 S.E.2d 833, 835 (1985).

Defendant declined to address the trial court and did not testify as to any of the alleged violations. The State having presented competent evidence of each of the violations and defendant having presented no evidence to the contrary, the trial court in its written judgment did not abuse its discretion by finding that defendant had willfully and without lawful excuse violated the condition of probation found in the 29 May 2005 violation report. Because the breach of any one condition is sufficient grounds to revoke probation, see *State v. Seay*, 59 N.C. App. 667, 670-71, 298 S.E.2d 53, 55 (1982), *appeal dismissed and disc. rev. denied*, 307 N.C. 701, 301 S.E.2d 394 (1983), the trial court did not err by revoking defendant's probation and activating his sentence.

Affirmed.

Judges TYSON and LEVINSON concur.

Report per Rule 30(e).