

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA06-612

NORTH CAROLINA COURT OF APPEALS

Filed: 6 March 2007

STATE OF NORTH CAROLINA

v.

Nash County  
No. 98 CRS 7050

TERRY GRAY SUTTON,  
Defendant.

Appeal by defendant from judgment entered 9 January 2006 by Judge Alma L. Hinton in Superior Court, Nash County. Heard in the Court of Appeals 19 February 2007.

*Attorney General Roy Cooper, by Special Deputy Attorney General Donald R. Teeter, for the State.*

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

WYNN, Judge.

The minimum requirements of due process in a final probation revocation hearing require, *inter alia*, a court hearing on the alleged violation.<sup>1</sup> Here, Defendant asserts that the evidence was insufficient to demonstrate that he waived his right to a hearing. Because the record shows Defendant received notice of his alleged violations, and in fact, a hearing was held, we uphold the trial court order revoking probation.

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<sup>1</sup> *State v. Williamson*, 61 N.C. App. 531, 533-34, 301 S.E.2d 423, 425 (1983).

On 7 August 2001, Defendant Terry Gray Sutton was convicted of selling cocaine and sentenced to a term of fifteen to eighteen months' imprisonment. Defendant's sentence was suspended, and he was placed on supervised probation for eighteen months. Subsequently, probation violation reports were filed, alleging that Defendant had failed to comply with the terms of his probation. Specifically, it was alleged that Defendant had: (1) failed to report to his probation officer; (2) was in arrears on his monetary obligations; (3) tested positive for marijuana; (4) failed to obtain employment; and, (5) failed to obtain an evaluation and follow treatment as recommended.

At a probation hearing on 9 January 2006, Defendant admitted the violations contained in the probation violation reports. The trial court heard from Defendant's probation officer regarding the alleged violations. Afterwards, Defendant's counsel read a statement from Defendant in which he again admitted to the violations. Defendant then addressed the court and stated that he "d[id]n't have no legitimate excuse or whatever, but remorse right now." The trial court found that Defendant had willfully violated the terms of his probation. Accordingly, the trial court revoked Defendant's probation and activated his suspended sentence. Defendant appeals.

Defendant first argues that the trial court erred by finding a waiver of the probation violation hearing and admissions of probation violations by appointed counsel without making a proper inquiry of Defendant. Defendant asserts that the evidence is

insufficient to demonstrate that he waived these rights.

After careful review of the record, briefs, and contentions of the parties, we find no error. "A proceeding to revoke probation is not a criminal prosecution, and we have no statute in this State requiring a formal trial in such a proceeding. Proceedings to revoke probation are often regarded as informal or summary." *State v. Hewett*, 270 N.C. 348, 353, 154 S.E.2d 476, 479 (1967). The "minimum requirements of due process in a final probation revocation hearing" require:

(1) a written notice of the conditions allegedly violated;

(2) a court hearing on the violation(s) including:

(a) a disclosure of the evidence against him, or,

(b) a waiver of the presentation of the State's evidence by an in-court admission of the willful or without lawful excuse violation as contained in the written notice (or report) of violation,

(c) an opportunity to be heard in person and to present witnesses and evidence,

(d) the right to cross-examine adverse witnesses;

(3) a written judgment by the judge which shall contain

(a) findings of fact as to the evidence relied on,

(b) reasons for revoking probation.

*State v. Williamson*, 61 N.C. App. 531, 533-34, 301 S.E.2d 423, 425 (1983) (citations omitted).

Here, Defendant received notice of his alleged probation

violations, and despite Defendant's contentions to the contrary, a hearing was held. The State presented the testimony of Defendant's probation officer, who testified to the violations committed by Defendant. Defendant was then given an opportunity to be heard, at which time counsel read a statement from Defendant admitting the violations and taking responsibility for his actions. Defendant then personally spoke to the court, declaring that he had no "legitimate excuse" for violating his probation. There is no requirement that the court personally examine a defendant regarding his waiver of a violation hearing, or his admission that he violated his probation, akin to that required when a defendant pleads guilty. *Cf.* N.C. Gen. Stat. § 15A-1022 (2005). Thus, we conclude there was no violation of Defendant's right to due process, and the assignment of error is overruled.

Defendant next argues the trial court failed to make sufficient findings of fact to support the probation revocation. We disagree.

The trial court found that, based on the record, as well as the evidence presented by the parties, Defendant had violated the terms of his probation as alleged in the probation violation report. When a 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. *Williamson*, 61 N.C. App. at 535, 301 S.E.2d at 426. 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 find no error.

Affirmed.

Judges ELMORE and GEER concur.

Report per Rule 30(e).