

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA06-851

NORTH CAROLINA COURT OF APPEALS

Filed: 1 May 2007

STATE OF NORTH CAROLINA

v.

ROGER KEVIN WALSH

Wilkes County
Nos. 05 CRS 53741,
54174-6

Appeal by defendant from orders entered 16 December 2005 by Judge Charles Phillip Ginn in Wilkes County Superior Court. Heard in the Court of Appeals 16 April 2007.

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

Mercedes O. Chut for defendant appellant.

McCULLOUGH, Judge.

Defendant Roger Kevin Walsh appeals from an order modifying his probation to impose a new, special condition. In the brief for defendant, defense counsel represents that she has been unable to identify any issues that, in her opinion, have sufficient merit to support an argument and, consequently, submits the brief pursuant to *Anders v. California*, 386 U.S. 738, 18 L. Ed. 2d 493, *reh'g denied*, 388 U.S. 924, 18 L. Ed. 2d 1377 (1967), and *State v. Kinch*, 314 N.C. 99, 331 S.E.2d 665 (1985).

By letter dated 22 September 2006, defense counsel informed defendant that, in her opinion, she was unable to find error in his

trial and that he could file his own arguments with this Court, if he so desired. Copies of the transcript, record, and the brief filed by counsel were sent to defendant. Accordingly, we hold that defendant's counsel has substantially complied with the holdings in *Anders* and *Kinch*. Defendant has filed no arguments in this Court.

Pursuant to *Anders* and *Kinch*, we normally must determine from a full examination of all the proceedings whether the appeal is wholly frivolous. However, in defendant's brief, defense counsel asserts as a preliminary matter that this appeal is moot and may be subject to dismissal. We agree.

On 9 November 2005, defendant pled guilty to charges of violation of a domestic violence protective order; making a harassing telephone call; assault on a female; felony breaking and entering; possession of burglary tools; and simple possession of a schedule IV controlled substance. These convictions were contained in four separate orders for which defendant received the following sentences: six to eight months for No. 05 CRS 54175; eight to ten months for No. 05 CRS 54174; seventy-five days for No. 05 CRS 54176; and seventy-five days for No. 05 CRS 53741. While each of these sentences were to run consecutively, the trial court suspended Mr. Walsh's sentence and imposed sixty months of supervised probation.

On 16 December 2005, after a hearing on a probation violation report, the trial court modified the terms of defendant's probation to include the special condition of electronic house arrest for

twelve months. Defendant gave oral notice of appeal for this probation modification order, resulting in the appeal *sub judice*.

After defendant gave notice of appeal for the probation modification order, defendant was found to be in violation of his probation again. As a result of this second violation, the trial court activated defendant's sentence. While defendant also gave notice of appeal for this revocation order, he withdrew this appeal on 6 April 2006.

A case becomes moot when a legal controversy either "ceases to exist," *In re A.K.*, 360 N.C. 449, 452, 628 S.E.2d 753, 755 (2006), or "a determination is sought on a matter which, when rendered, cannot have any practical effect on the existing controversy." *Roberts v. Madison County Realtors Ass'n*, 344 N.C. 394, 398-99, 474 S.E.2d 783, 787 (1996). Here, the revocation of defendant's probation and resulting incarceration, which he is not challenging, renders his challenge to the special probation condition of electronic house arrest no longer justiciable. Any error committed by the trial court in entering the order modifying the terms and conditions of his probation is rendered moot by the revocation of his probation. Accordingly, defendant's appeal will be dismissed. See *Dickerson Carolina, Inc. v. Harrelson*, 114 N.C. App. 693, 443 S.E.2d 127, *appeal dismissed, disc. review denied*, 337 N.C. 691, 448 S.E.2d 520 (1994) (holding that an appeal which presents a moot question should be dismissed).

Dismissed.

Judges STEELMAN and LEVINSON concur.

Report per Rule 30(e).