

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA06-909

NORTH CAROLINA COURT OF APPEALS

Filed: 6 February 2007

STATE OF NORTH CAROLINA

v.

Durham County
No. 98 CRS 12136

CONSTANCE SAAFIR

Appeal by Defendant from judgment entered 13 March 2006 by Judge Abraham P. Jones in Superior Court, Durham County. Heard in the Court of Appeals 16 January 2007.

Attorney General Roy Cooper, by Assistant Attorney General Newton G. Pritchett, Jr., for the State.

William D. Spence for Defendant-Appellant.

McGEE, Judge.

Defendant was found guilty by a jury on 30 October 1998 of keeping a dwelling for the purpose of possessing or selling controlled substances. Defendant was sentenced to a term of eight to ten months in prison, which the trial court suspended. The trial court placed Defendant on supervised probation for sixty months. Defendant gave notice of appeal on 30 October 1998. In an opinion filed 19 September 2000, this Court found no error, and the judgment was certified to the superior court on 9 October 2000.

Defendant's probation officer, L.R. Caviness, filed a

probation violation report on 17 December 1999 alleging that Defendant had failed to comply with the monetary conditions of her probation, had failed to report for scheduled probation appointments, and had failed to complete community service hours. After finding good cause pursuant to N.C. Gen. Stat. § 15A-1344, Judge Henry W. Hight, Jr. entered an order on 12 November 2000 modifying Defendant's probation. In addition to changing the monetary conditions, the trial court ordered that "[D]efendant's term of probation is extended for a period of 4 years, from 10-30-00 to 10-29-04."

Probation Officer Jan Williams filed a probation violation report on 24 September 2004 alleging that Defendant had violated several conditions of her probation. An order for Defendant's arrest was issued on 27 September 2004. Defendant was arrested and served with the violation report on 18 December 2005. Following a hearing, the trial court revoked Defendant's probation and activated the remainder of her sentence of imprisonment on 13 March 2006.

The dispositive issue on appeal is whether the trial court had jurisdiction to revoke Defendant's probation. Defendant asserts that because her probation was revoked after the expiration of her probation term, the trial court had no statutory authority to do so because it failed to make any finding that the State made reasonable efforts to notify her about its intent to revoke her probation. We agree.

Pursuant to N.C. Gen. Stat. § 15A-1344 (2005), a court may

revoke probation after the period of probation expires if:

(1) Before the expiration of the period of probation the State has filed a written motion with the clerk indicating its intent to conduct a revocation hearing; and

(2) The court finds that the State has made reasonable effort to notify the probationer and to conduct the hearing earlier.

N.C. Gen. Stat. § 15A-1344(f) (1) (2) 2005.

This Court has previously held that a trial court lacks both the jurisdiction and authority to revoke a defendant's probation where the trial court failed to make the finding required by section (f) (2) of the above statute. *State v. Burns*, 171 N.C. App. 759, 763, 615 S.E.2d 347, 350 (2005). In *Burns*, we concluded that it was reversible error for the trial court to revoke the defendant's probation nearly three years after his probation expired where the trial court made no finding regarding the State's efforts to notify the defendant of the State's intent to seek revocation. *Id.* at 760-61, 615 S.E.2d at 348.

In the present case, the trial court revoked Defendant's probation on 18 December 2005 following the expiration of her probation term.¹ In so doing, the trial court made no finding as to whether the State took reasonable steps to notify or locate Defendant. In fact, there was no evidence presented at the hearing

¹ Defendant notes that when the trial court extended the term of her probation in 2000, it incorrectly calculated the term of her probation. Because the probation term would have been stayed during the direct appeal from her conviction, the expiration date would have been 9 October 2005, 60 months after the appeal was complete, not 29 October 2004 as specified in the trial court's modification order. Nevertheless, applying either of these dates, the revocation of defendant's probation occurred after expiration of probation and, therefore, was subject to the requirements of N.C. Gen. Stat. § 15-A-1344(f).

indicating that the State took any steps to locate Defendant between the time that the violation report was filed and the time that Defendant was arrested. Because the trial court failed to make the findings required by N.C.G.S. § 15A-1344, we hold the trial court lacked jurisdiction to revoke Defendant's probation. The judgment from which Defendant appeals is arrested and Defendant is discharged. As a result of our holding, we need not address Defendant's remaining assignment of error.

Judgment arrested.

Chief Judge MARTIN and Judge HUNTER concur.

Report per Rule 30(e)