

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA06-998

NORTH CAROLINA COURT OF APPEALS

Filed: 1 May 2007

STATE OF NORTH CAROLINA

v.

CHRISTOPHER RONALD WILLIAMS

Cumberland County
Nos. 05 CRS 064902
05 CRS 065177
05 CRS 21452-56

Appeal by defendant from judgments entered 9 February 2006 by Judge Ripley E. Rand in Cumberland County Superior Court. Heard in the Court of Appeals 16 April 2007.

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

Paul T. Cleavenger for defendant appellant.

McCULLOUGH, Judge.

Defendant Christopher Ronald Williams ("defendant") appeals from his convictions and sentences entered 9 February 2006. He argues that the trial court erred by not crediting him for the total time he was incarcerated. For the reasons stated herein, we determine there was no error.

In 2003, defendant was convicted of larceny after breaking and entering. In 2005, defendant was convicted of larceny after breaking and entering, breaking or entering, possession of stolen goods, and two counts of obtaining property by false pretenses. The

trial court suspended the sentences imposed for the 2003 and 2005 convictions and placed defendant on probation. Defendant's probation officer filed probation violation reports in each of the above cases on 25 August 2005.

In 2006, defendant was charged with two counts of breaking and/or entering and two counts of larceny after breaking and/or entering. Pursuant to a plea agreement, defendant pled guilty to the two counts of breaking and/or entering and two counts of larceny after breaking and/or entering. The plea agreement provided that defendant was to be sentenced to an active term of imprisonment of 8 to 10 months to be served after the expiration of the 2003 and 2005 sentences.

After taking defendant's guilty plea, the trial court heard the probation violations regarding the 2003 and 2005 convictions. Defendant, through counsel, admitted he willfully violated his probation. Judge Rand found that the probation violations did occur and each was willful and without lawful excuse. The trial court revoked defendant's probation in each case and activated defendant's sentences, giving the same credits provided for in the original judgments. Judge Rand then sentenced defendant for the 2006 convictions as provided in the plea agreement.

In his sole argument on appeal, defendant contends the trial court erred in his 2005 case of possession of stolen goods by failing to give him the appropriate amount of credit for the time he was incarcerated on that charge. We disagree.

Credits allowed against the service of sentences is governed by the North Carolina General Statutes which provide:

The minimum and maximum term of a sentence shall be credited with and diminished by the total amount of time a defendant has spent, committed to or in confinement in any State or local correctional, mental or other institution as a result of the charge that culminated in the sentence. The credit provided shall be calculated from the date custody under the charge commenced and shall include credit for all time spent in custody pending trial, trial de novo, appeal, retrial, or pending parole, probation, or post-release supervision revocation hearing: Provided, however, the credit available herein shall not include any time that is credited on the term of a previously imposed sentence to which a defendant is subject.

N.C. Gen. Stat. § 15-196.1 (2006).

The original judgment in 05 CRS 21455 provided that defendant be given credit for 10 days pretrial confinement. It further set out that he was to serve an active term of 30 days as a special condition of probation. Defendant asserts that he should have been given credit for the additional 30 days. Defendant did not object to the amount of credit at sentencing, and he has failed to show that he served the active term as a special condition of his probation. Judge Rand gave defendant a 10-day credit as set out in the original judgment. We hold that the trial court credited defendant with all the time that was properly due him and this assignment of error is overruled.

No error.

Judges STEELMAN and LEVINSON concur.

Report per Rule 30(e).

