

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA08-1274

NORTH CAROLINA COURT OF APPEALS

Filed: 21 July 2009

STATE OF NORTH CAROLINA,
Plaintiff,

v.

Carteret County
No. 04CRS50247

ANGEL LUIS PEREZ, JR.,
Defendant.

Appeal by defendant from judgment entered on or about 5 May 2008 by Judge Benjamin G. Alford in Carteret County Superior Court. Heard in the Court of Appeals 26 March 2009.

Attorney General Roy A. Cooper, III, by Assistant Attorney General Juanita B. Twyford, for the State.

Mary McCullers Reece, for defendant-appellant.

STROUD, Judge.

Defendant's sole contention on appeal is that the trial court erred in revoking his probation and activating his prison sentence. We affirm.

Defendant does not dispute that he failed to report to his probation officer as required by the terms of his probation. He argues however that the failure was not willful because an official in New York told him that he did not need to go to North Carolina.

According to *State v. Tozzi*:

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. The burden is on defendant to present competent evidence of his inability to comply with the conditions of probation; and that otherwise, evidence of defendant's failure to comply may justify a finding that defendant's failure to comply was wilful or without lawful excuse.

84 N.C. App. 517, 521, 353 S.E.2d 250, 253 (1987) (citations omitted). The trial court's decision to revoke probation is subject to review only for abuse of discretion. *State v. Hewett*, 270 N.C. 348, 356, 154 S.E.2d 476, 482 (1967). Abuse of discretion means the trial court's decision "is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision." *State v. Hutchinson*, 139 N.C. App. 132, 137, 532 S.E.2d 569, 573 (2000) (citation and quotation marks omitted).

The sole evidence presented by defendant was his own, sometimes contradictory, hearsay testimony that an unnamed official in New York said that defendant need not report to North Carolina after his prison sentence in New York. We perceive no abuse of discretion in the trial court's conclusion that defendant had not "present[ed] competent evidence of his inability to comply with the conditions of [his] probation[.]" *Tozzi*, 84 N.C. App. at 521, 353 S.E.2d at 253. Accordingly, we affirm.

AFFIRM.

Judges JACKSON and STEPHENS concur.

Report per Rule 30(e).