

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA08-152

NORTH CAROLINA COURT OF APPEALS

Filed: 21 October 2008

STATE OF NORTH CAROLINA

v.

Buncombe County
No. 01 CRS 1762

JOSE LOPEZ, III

Court of Appeals

Appeal by defendant from judgment entered 2 August 2007 by Judge James U. Downs in Buncombe County Superior Court. Heard in the Court of Appeals 15 September 2008.

Attorney General Roy Cooper, by Assistant Attorney General Donna D. Smith, for the State.

Slip Opinion

Mary March W. Exum, for defendant-appellant.

ELMORE, Judge.

On 7 September 2000, defendant Jose Lopez, III, pled guilty to assault with a deadly weapon inflicting serious injury and was sentenced to a term of twenty to thirty-three months imprisonment. The trial court suspended defendant's sentence and placed him on supervised probation for thirty-six months.

On 12 February 2001, a probation violation report was filed alleging that defendant had: (1) absconded; (2) was in arrears on his monetary obligation; and (3) tested positive for the use of marijuana.

The trial court held a probation violation hearing in Buncombe County Superior Court on 9 August 2007. Defendant waived a formal reading and admitted the allegations. The trial court heard from defendant's probation officer who stated that defendant had absconded. The probation officer further stated that they had located defendant in Indiana, where he had been incarcerated for the past four years. The State of North Carolina was notified upon defendant's release, and the State brought him back to face the charge that he had violated his probation. The trial court revoked defendant's probation and activated his suspended sentence. Defendant appeals.

Defendant's sole argument on appeal is that the trial court lacked jurisdiction to revoke his probation because the trial court failed to make findings in accordance with N.C. Gen. Stat. §15A-1344(f). Specifically, defendant contends that the trial court failed to make findings that the State had made reasonable efforts to notify him and to conduct the hearing during the period of probation.

After careful review of the record, briefs and contentions of the parties, we affirm. N.C. Gen. Stat. § 15A-1344(f) provides:

Revocation after Period of Probation. -- The court may revoke probation after the expiration of the period of probation 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) (2007). Here, the trial court set forth its findings on the form for Judgment and Commitment Upon Revocation of Probation, AOC-CR-607. The form stated, albeit in preprinted text, that it found:

Beyond a reasonable doubt that before the expiration of the period of probation, the State filed a written motion with the clerk indicating its intent to conduct a revocation hearing and the State made a reasonable effort to notify the probationer and to conduct the hearing during the period of probation set out in the judgment and commitment.

Accordingly, because the judgment and commitment form contained sufficient findings of fact, we affirm.

Affirmed.

Judges WYNN and GEER concur.

Report per Rule 30(e).