

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA08-162

NORTH CAROLINA COURT OF APPEALS

Filed: 21 October 2008

STATE OF NORTH CAROLINA

v.

Johnston County  
Nos. 06 CRS 11375, 52026  
52029, 52032

OTHELLO STEVEN HATCHER

Appeal by defendant from judgments entered 14 August 2007 by Judge Jack A. Thompson in Superior Court, Johnston County. Heard in the Court of Appeals 06 October 2008.

*Attorney General Roy Cooper, by Assistant Attorney General Scott A. Conklin, for the State.*

*Kimberly P. Hoppin, for defendant-appellant.*

WYNN, Judge.

To revoke a defendant's probation, "[a]ll that is required is that the evidence be sufficient to reasonably satisfy the judge in the exercise of his sound discretion that the defendant has willfully violated a valid condition of probation."<sup>1</sup> Because the testimony of Defendant Othello Hatcher's probation officer provided sufficient evidence that Defendant willfully violated the terms of his probation, we affirm.

On 28 April 2006, Defendant pled guilty to two counts of

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<sup>1</sup> *State v. White*, 129 N.C. App. 52, 58, 496 S.E.2d 842, 846 (1998) (citations omitted).

felony conspiracy and two counts of larceny of a motor vehicle in Johnston County Superior Court and was sentenced to consecutive terms of eight to ten months' imprisonment. The trial court suspended Defendant's sentences and placed him on supervised probation for thirty-six months. As a condition of Defendant's parole, he was to "[r]emain within the jurisdiction of the Court unless granted written permission to leave by the Court or the probation officer[.]" On one of the judgments, it was noted that Defendant's probation would be transferred to New Jersey.

On 7 September 2006, Defendant pled guilty to felony breaking and/or entering in Cumberland County Superior Court and was sentenced to a term of eight to ten months' imprisonment. The trial court suspended Defendant's sentence and placed him on supervised probation for twenty-four months. On the judgment, it was also noted that Defendant's probation would be transferred to New Jersey.

On 19 October 2006, probation violation reports were filed regarding the Johnston County and Cumberland County judgments. The reports alleged that Defendant had violated his probation by absconding. Specifically, the reports each alleged:

The Defendant was advised by Cumberland County probation and Johnston County probation to make contact with them after being released from jail. The defendant was made aware that all paperwork and Interstate Compact forms would need to be completed before he was able to leave the State. The defendant was released from the Cumberland County Jail on 9-8-2006 and has made no contact and his whereabouts unknown, thus rendering himself an absconder.

Defendant was arrested on 6 July 2007 on unrelated charges of felony and misdemeanor larceny.

The trial court held a probation violation hearing in Johnston County Superior Court on 13 August 2007. The trial court heard from Defendant's probation officer and Defendant regarding the alleged violations. Defendant testified that he was told by his probation officer that he had seventy-two hours after his release from jail to get to New Jersey. Thus, Defendant claimed that he did what he was instructed to do, i.e., he returned to New Jersey and reported to a probation officer. Furthermore, Defendant testified he visited a probation officer in New Jersey and was told that paying his full restitution amount would terminate his probation. At the hearing, Defendant produced a receipt showing an amount of \$1,685 to "Thomas David" "for restitution," however the source of the payment was not conclusively established.

The trial court found that Defendant willfully and without lawful excuse violated the terms of his probation. At the conclusion of the hearing, the trial court entered judgment revoking Defendant's probation and activating his two consecutive sentences of eight to ten months' imprisonment.

Defendant now appeals, arguing that the trial court erred by: (I) finding that he willfully violated the terms and conditions of his probation, and (II) failing to make sufficient findings of fact to support the probation revocation.

I.

Defendant first argues that the trial court erred by finding

that he willfully violated the terms and conditions of his probation without lawful excuse. We disagree.

It is well settled that "'probation or suspension of sentence is an act of grace' and not a right." *State v. Alston*, 139 N.C. App. 787, 794, 534 S.E.2d 666, 670 (2000) (quoting *State v. Baines*, 40 N.C. App. 545, 550, 253 S.E.2d 300, 303 (1979)). This Court has stated:

The trial court is not bound by strict rules of evidence in probation hearings and the probation violation alleged need not be proven beyond a reasonable doubt. All that is required is that the evidence be sufficient to reasonably satisfy the judge in the exercise of his sound discretion that the defendant has willfully violated a valid condition of probation.

*State v. White*, 129 N.C. App. 52, 58, 496 S.E.2d 842, 846 (1998) (citations omitted).

In the present case, Defendant's probation officer, Alli Rasor, testified as follows regarding the requirement that Defendant report to his probation officer prior to transferring to New Jersey:

[Officer Rasor]: [Defendant] was placed on probation here in Johnston County and he provided an address of New Jersey. So we would have to initiate the Interstate Compact paperwork, but could not finish any of that until he was finished with everything in Cumberland County. So he was told upon his release from Cumberland County, he needed to report to the Cumberland County probation office and he would have to report back here to complete that paperwork and receive reporting instructions from New Jersey.

[District Attorney]: Now, did you tell the defendant that yourself, that he needed to report back to Johnston County?

[Officer Rasor]: I don't remember myself telling him that. Officer Christine Dodd has notes that she did and that she told an officer in Cumberland County to relay that same information.

[District Attorney]: And Ms. Dodd was the original probation officer assigned to that case; is that correct?

[Officer Rasor]: Yes, ma'am. She was handling the Interstate Compact paperwork.

[District Attorney]: How does Interstate Compact work? If somebody provides you an address of out of state, do they immediately get to go?

[Officer Rasor]: No.

[District Attorney]: How does that work?

[Officer Rasor]: You have to receive reporting instructions from the receiving state.

[District Attorney]: Do they always accept other cases of probation?

[Officer Rasor]: Not necessarily.

[District Attorney]: So it may be a situation where they would not have accepted his case; is that correct?

[Officer Rasor] It was - - it's a possibility.

[District Attorney]: Does somebody who lives in another state who wants to be transferred to that state have to remain in Johnston County until you guys receive approval?

[Officer Rasor] Now you do. At the time, it depended upon the sending - - the receiving state. They had to provide you with reporting instructions. And until you have those instructions, they could not leave the State of North Carolina.

[District Attorney]: And was that what [Defendant] was told, according to your notes?

[Officer Rasor]: Yes, ma'am.

[District Attorney]: So he remained in custody from April 20<sup>th</sup>, 2006, until September 7<sup>th</sup>, 2006, when his Cumberland County charges were taken of; is that correct?

[Officer Rasor]: Yes, ma'am.

[District Attorney]: Did you then - - or anybody from your office ever hear from [Defendant] after the September 7<sup>th</sup>, 2006, date?

[Officer Rasor]: No, ma'am. He was released on September the 8<sup>th</sup>, and neither the Cumberland County office or this office has any record of him contacting us.

Defendant asserts that the State's evidence does not refute his claim that he was told he should report to New Jersey within 72 hours, noting that Officer Rasor did not have personal knowledge regarding what his previous probation officer informed him. Defendant also claims to have provided evidence in the form of a receipt showing that he paid \$1,685 to "Thomas David." However, the receipt did not bear any marking that it was from the State of New Jersey, and the name "Thomas David" could not be verified.

We hold that Officer Rasor's testimony provided sufficient evidence that Defendant knew he was required to report to his probation officer prior to leaving the State but failed to do so. Thus, the trial court did not err by concluding that Defendant willfully violated his probation.

We note that Defendant additionally argues that even if the trial court properly determined that he had violated a condition of his probation, the trial court abused its discretion in revoking his probation. Defendant asserts that a remedy short of revocation

would have served the State's interests. However, Defendant failed to preserve this argument by assignment of error. Thus, we decline to review Defendant's contention. See N.C. R. App. P. 10(a), 10(c) (1), 28(b) (6).

II.

Defendant also argues the trial court erred by failing to make sufficient findings of fact to support the probation revocation. We disagree.

The trial court has a duty to make findings of fact which clearly show that it considered and evaluated the defendant's evidence. *State v. Williamson*, 61 N.C. App. 531, 535, 301 S.E.2d 423, 426 (1983) (citation omitted). When the court prefaces its findings with words such as "[b]ased upon the evidence presented," the court sufficiently shows that it considered all the evidence, including evidence presented by the defendant. See *id.* However, the trial court is not required to make specific findings of fact regarding the defendant's allegations. *Id.* This Court has stated:

Although the Judge could have been more explicit in the findings by stating that he had considered and evaluated defendant's evidence . . . and found it insufficient to justify breach of the probation condition, we hold that his failure to do so does not constitute an abuse of discretion. It would not be reasonable to require that a judge make specific findings of fact on each of defendant's allegations tending to justify his breach of conditions.

*Id.*

In this case, after a presentation of evidence by both the State and Defendant, the trial court found that based on the record

and evidence presented, Defendant had "willfully and without lawful excuse violated the terms and conditions of his probation as set forth in the violation report." Although the trial court could have been more explicit in the findings by stating that he had considered and evaluated Defendant's evidence, *see id.*, we cannot conclude that the trial court abused its discretion by failing to do so. Accordingly, we affirm.

Affirmed.

Judges ELMORE and GEER concur.

Report per Rule 30(e).