

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA08-281

NORTH CAROLINA COURT OF APPEALS

Filed: 17 February 2009

STATE OF NORTH CAROLINA

v.

JEMAR LEE BELL,
Defendant.

Brunswick County
Nos. 03 CRS 2212
03 CRS 2213
03 CRS 2215
03 CRS 2216

Appeal by defendant from judgments entered 10 September 2007 by Judge Ola M. Lewis in Brunswick County Superior Court. Heard in the Court of Appeals 12 January 2009.

Attorney General Roy Cooper, by Assistant Attorney General LaToya B. Powell, for the State.

Peter Wood for defendant-appellant.

GEER, Judge.

Defendant Jemar Lee Bell appeals from 10 September 2007 judgments revoking his probation and activating two consecutive sentences of 16 to 20 months each. In his sole argument on appeal, defendant contends that the probation hearing was held after defendant's probationary term had expired. Defendant has, however, miscalculated the expiration date of his probation. Since the record establishes that the trial court had jurisdiction, we affirm.

Discussion

On 6 May 2003, defendant pled guilty to seven counts of taking indecent liberties with a child. Pursuant to a plea arrangement,

defendant received two active consecutive sentences of 16 to 20 months each and two consecutive suspended sentences of 16 to 20 months each. For the suspended sentences, defendant was placed on probation for a term of 48 months, which he was to begin serving upon his release from incarceration.

Probation violation reports were filed on 6 March 2006 and 14 August 2006, alleging that defendant violated his probation by: (1) leaving the state on three separate occasions; (2) failing to pay probation fees; (3) staying overnight in a hotel room with a woman and her two children; (4) failing to comply with the sex offender treatment program; and (5) absconding from supervision. On 10 September 2007, the trial court conducted a probation revocation hearing. Defendant admitted that he was in arrears in paying his probation fees and that he failed to successfully complete the sex offender treatment program. He denied, however, that he spent the night in a hotel room with a woman and her two children. Based upon defendant's admissions, the trial court revoked defendant's probation and activated the two suspended sentences.

On appeal, defendant argues the trial court lacked statutory authority to revoke his probation because his probationary term had expired, and the trial court failed to make findings that the State made reasonable efforts to conduct the hearing before his probationary term ended. "A court's jurisdiction to review a probationer's compliance with the terms of his probation is limited by statute." *State v. Hicks*, 148 N.C. App. 203, 204, 557 S.E.2d 594, 595 (2001). The trial court has authority to revoke a

defendant's probation if the defendant violated a condition of probation "at any time prior to the expiration or termination of the period of probation." N.C. Gen. Stat. § 15A-1344(d) (2007). After the expiration of the probationary term, the court may only revoke a defendant's 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).

In this case, defendant was sentenced to two consecutive terms of imprisonment of 16 to 20 months each in 03 CRS 2210 and 03 CRS 2211. In 03 CRS 2212-13 and 03 CRS 2215-16, defendant received two consecutive suspended sentences of 16 to 20 months imprisonment and 48 months of supervised probation. The judgment in 03 CRS 2212 specifically provides that defendant's 48 months of supervised probation shall begin when the defendant is released from incarceration in 03 CRS 2211. Defendant was released on 20 July 2005. Therefore, contrary to defendant's contention, his probationary term would have expired on 20 July 2009, well after the date of his probation revocation hearing. Accordingly, the judgment revoking defendant's probation and activating his suspended sentences is affirmed.

Affirmed.

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Judges WYNN and ELMORE concur.

Report per Rule 30(e).