

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA09-1436

NORTH CAROLINA COURT OF APPEALS

Filed: 6 July 2010

STATE OF NORTH CAROLINA

v.

Granville County  
Nos. 08 CRS 2206-09

BARRY TIMOTHY RILEY

Appeal by defendant from judgments entered 27 April 2009 by Judge Henry W. Hight, Jr., in Granville County Superior Court. Heard in the Court of Appeals 21 June 2010.

*Attorney General Roy Cooper, by Assistant Attorney General Lotta A. Crabtree, for the State.*

*Lynn Norton-Ramirez for defendant-appellant.*

ERVIN, Judge.

Defendant Barry Timothy Riley appeals from judgments entered by the trial court revoking his probation and activating his suspended sentences. After carefully considering defendant's challenges to the trial court's judgments in light of the record and the applicable law, we conclude that the judgments should be affirmed, but remand this case to the trial court for the correction of a clerical error.

On 5 July 2007, defendant pled guilty in Durham County to six charges of forgery in File Nos. 07 CR 043271, 43272, 43273, 43274, 43275, and 43276. Defendant's convictions in File Nos. 07 CR

43271-73 were consolidated into a judgment entered in File No. 07 CR 43271, with defendant being sentenced to 120 days in jail. The court suspended defendant's sentence and placed defendant on supervised probation for twelve months. Defendant's convictions in File Nos. 07 CR 43274-76 were consolidated into a judgment entered in File No. 07 CR 43274, with defendant being sentenced to 120 days in jail. The court suspended this sentence as well, and placed defendant on supervised probation for twelve months. The two suspended sentences imposed upon defendant in these cases were ordered to run consecutively.

On 18 September 2007, defendant pled guilty in Durham County to ten counts of uttering a forged instrument in File Nos. 07 CR 49150, 49151, 49152, and 49153. All of the cases in which defendant entered guilty pleas on this occasion were consolidated for judgment in File No. 07 CR 49150, with defendant being sentenced to 120 days in jail. The court suspended defendant's sentence and placed him on twelve months supervised probation. Defendant's suspended sentence was ordered to be served after the expiration of the sentence imposed in File No. 07 CR 43271.

On 7 November 2007, defendant pled guilty in Durham County to felonious possession of a firearm in File No. 07 CRS 42896. The court sentenced defendant to a minimum of 13 months and a maximum of 16 months imprisonment. The trial court suspended defendant's sentence and placed defendant on supervised probation for 18 months. The trial court also placed defendant on special probation

and ordered him to serve three days in jail, with credit given for time already served.

At some point not clearly indicated in the record, responsibility for supervising defendant's cases was transferred to Granville County. In July 2008, defendant's probation officer filed violation reports in Granville County alleging that he had violated the terms and conditions of his probation.<sup>1</sup> In August 2008, Judge R. Baskerville held a probation violation hearing on Granville County File Nos. 08 CRS 2206-08. At the conclusion of that hearing, Judge Baskerville found that defendant had willfully violated the terms and conditions of his probation, modified the terms and conditions of defendant's probation and extended defendant's probationary period for an additional twelve months from 5 July 2008 to 4 July 2009 in File Nos. 08 CrS 2206-2208, and for an additional twelve months from 18 September 2008 to 17 September 2009 in File No. 08 CrS 2208. In October 2008, Judge Paul C. Ridgeway held a probation violation hearing on Granville County File No. 08 CRS 2209. Judge Ridgeway found that defendant had willfully violated the terms and conditions of his probation, modified defendant's payment schedule, and extended defendant's probationary period for an additional twelve months from 7 May 2009 to 7 May 2010.

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<sup>1</sup> The Durham County cases were assigned new Granville County case numbers as follows: (1) Granville County File No. 08 CRS 2206 was a consolidation of File Nos. 07 CR 043271-73; (2) Granville County File No. 08 CRS 2207 was a consolidation of File Nos. 07 CR 043274-76; (3) Granville County File No. 08 CRS 2208 was a consolidation of File Nos. 07 CR 049150-53; and (4) Granville County File No. 08 CRS 2209 was assigned to File No. 07 CRS 042896.

On 26 November 2009, defendant's probation officer filed violation reports dated 10 November 2008 in File Nos. 08 CRS 2206, 2207, 2208, and 2209. The officer filed addenda dated 24 November 2008 in File Nos. 08 CRS 2206, 2207, and 2208 on the same date. Paragraph 2 of the 24 November 2008 addenda specifically alleged that defendant had failed to notify his probation officer of a change of address. On 12 January 2009, defendant's probation officer filed two addenda dated 9 January 2009 in File No. 08 CRS 2209. The 9 January 2009 addenda specifically alleged that defendant failed to notify his probation officer of his change of address.

The trial court held a hearing concerning defendant's alleged probation violations on 27 April 2009. At the beginning of the hearing, defendant requested a formal reading of the alleged violations. In response to defendant's request, the prosecutor alleged that defendant had committed the following violations: (1) accumulating a monetary arrearage of \$675.00; (2) changing his residence without prior approval of or notification to his probation officer; (3) moving out of the county without prior approval of the probation officer; (4) being convicted of a criminal offense; (5) failing to report to jail on the weekend of 31 October 2008; and (6) failing to submit to jail on 13, 20, and 27 September 2008 and 4 October 2008. In response, defendant admitted that he had not made required monetary payments, but denied that his failure to make these payments was wilful. In addition, defendant admitted that he had moved in with his

daughter, but denied that he had wilfully failed to inform his probation officer of that fact. Furthermore, defendant admitted that he had been convicted of driving while license revoked and that he had failed to report to serve a weekend in jail on 31 October 2008, but denied that he acted wilfully on those occasions. Defendant denied the remaining alleged violations.

At the hearing, Probation Officer Kelly Robinson testified that defendant violated his probation by failing to make payments toward the fines and restitution that he was required to pay as a condition of his probation and by failing to maintain gainful employment. In addition, Officer Robinson testified that she had attempted to locate defendant at the address in Creedmoor that he had provided, but had been told by defendant's landlord that defendant had not lived at the address for several weeks. After speaking with defendant's family, Officer Robinson found defendant at the Kings Inn Motel in Oxford. During his own testimony, defendant admitted that he had not notified Officer Robinson of his change of address.

At the conclusion of the revocation hearing, the trial court found in File Nos. 08 CRS 2206, 2207, and 2208 that defendant willfully violated the terms and conditions of probation "as specifically set forth in numbered paragraph two." The trial court then stated, "And in 08-CRS-2209, that he willfully violated terms of probation as set forth in numbered paragraph number one." Based upon these determinations, the trial court ordered that defendant's probationary judgment be revoked and that his suspended sentences

be activated. The written judgments that the trial court entered relating to File Nos. 08 CRS 2206, 2207, and 2208 state that "[t]he condition violated and the facts of each are as set forth in paragraph(s) 2 in the Violation Report or Notice dated 11/24/2008." As to File No. 08 CRS 2209, the written judgment entered by the trial court states that "[t]he condition violated and the facts of each are as set forth in paragraph(s) 1 in the Violation Report or Notice dated 11/24/2008." Defendant noted an appeal to this Court from the trial court's judgments.

On appeal, defendant contends the trial court erred in revoking his probation in File No. 08 CRS 2209. According to defendant, the State failed to show that he committed a failure to report as alleged in the first paragraph of the 24 November 2008 addenda, which is the allegation specified in the trial court's written judgment. A close study of the record reveals, however, that defendant's argument does not justify a decision to vacate the trial court's order revoking his probation and activating his suspended sentence in File No. 08 CRS 2209.

A careful examination of the written judgment entered in File No. 08 CRS 2209 indicates that it incorrectly states the date of the violation report in which the allegation upon which the trial court relied in finding that defendant had violated the terms and conditions of his probation could be found. Simply put, there is no violation report in File No. 08 CRS 2209 dated 24 November 2008. The violation reports for File No. 08 CR 2209 include the original report dated 10 November 2008 and the two addenda dated 9 January

2009. Although the trial court erred by referring to a violation report dated 24 November 2008 in its written judgment in File No. 08 CRS 2209, we believe that this mistake was a clerical rather than a substantive error. *In re D.D.J.*, 177 N.C. App. 441, 444, 628 S.E.2d 808, 811 (2006) (stating that "[a] clerical error is 'an error resulting from a minor mistake or inadvertence, especially in writing or copying something on the record, and not from judicial reasoning or determination,'" and "include[s] mistakes such as inadvertent checking of boxes on forms, e.g., *id.*, or minor discrepancies between oral rulings and written orders") (citations omitted).

As we have already noted, Paragraph 2 of the 24 November 2008 addenda for File Nos. 08 CRS 2206, 2207, and 2208 alleges that defendant violated the terms and conditions of his probation by moving from his place of residence in Creedmoor, North Carolina, and failing to notify his probation officer of his new address. Paragraph 1 in one of the two addenda in File No. 08 CRS 2209 dated 9 January 2009 alleges that defendant violated his probation by failing to notify his probation officer that he had changed his residence from Creedmoor, North Carolina to Oxford, North Carolina. At the revocation hearing, Officer Robinson testified that defendant was not residing at the Creedmoor, North Carolina, address that defendant had provided to her and that he was residing at the Kings Inn Motel in Oxford, North Carolina, instead. In addition, defendant admitted that he failed to notify Officer Robinson of his change in address during his testimony at the

revocation hearing. The trial court found that defendant wilfully violated the terms and conditions of his probation in File Nos. 08 CRS 2206, 2207, and 2208 "as specifically set forth in numbered paragraph two" and in case number 08 CRS 2209 "as set forth in numbered paragraph number one."

Based upon the evidence received at the revocation hearing and the findings made by the trial court at the conclusion of that proceeding, it is clear to us that the trial court intended to find and actually indicated on the record that it found that defendant wilfully violated the terms and conditions of his probation in all cases by changing his residence without providing notice to his probation officer. We further conclude that the reference in the written judgment entered in File No. 08 CRS 2209 to the first paragraph in the 24 November 2008 addenda was intended to be a reference to the first paragraph in the 9 January 2009 addenda. As a result, we conclude that the judgment revoking defendant's probation and activating his suspended sentences in File No. 08 CRS 2209 contains a clerical error and should be corrected to reflect the allegation that the trial court found the State to have proven during defendant's revocation hearing, but that defendant is not otherwise entitled to relief on appeal as a result of the trial court's failure to correctly identify the allegation upon which it relied in revoking defendant's probation in its written order.

In reaching this conclusion, we are heavily influenced by the fact that we do not believe that Defendant has been prejudiced by this clerical error. The record and transcript clearly demonstrate



that the trial court properly considered the evidence before it and did not abuse its discretion in ordering defendant's probation revoked and activating his suspended sentences. Furthermore, the record clearly establishes the basis upon which the trial court concluded that defendant had wilfully violated the terms and conditions of his probation in File No. 08 CRS 2209. As a result, we affirm the orders of the trial court revoking Defendant's probation and activating his suspended sentences, but remand this case to the trial court for correction of the clerical error. See *State v. Smith*, 188 N.C. App. 842, 845, 656 S.E.2d 695, 696 (2008) (stating that, "[w]hen, on appeal, a clerical error is discovered in the trial court's judgment or order, it is appropriate to remand the case to the trial court for correction because of the importance that the record 'speak the truth.'").

Affirmed; Remanded for correction of clerical error.

Judges STEPHENS and BEASLEY concur.

Report per Rule 30(e).