

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA09-1547

NORTH CAROLINA COURT OF APPEALS

Filed: 6 July 2010

STATE OF NORTH CAROLINA

v.

Mecklenburg County  
No. 08 CRS 208540

ANDRES PIDILLA CARTER

Appeal by Defendant from judgment entered 16 April 2009 by Judge R. Stuart Albright in Mecklenburg County Superior Court. Heard in the Court of Appeals 22 June 2010.

*Attorney General Roy Cooper, by Assistant Attorney General Kathleen N. Bolton, for the State*

*Peter Wood, for Defendant.*

BEASLEY, Judge.

Defendant appeals from a judgment revoking his probation. After careful review, we affirm.

On 19 August 2008, Defendant pled guilty pursuant to a plea agreement to felony child abuse. The trial court sentenced Defendant to a term of twenty-five to thirty-nine months imprisonment, but suspended Defendant's sentence and placed him on supervised probation for thirty months.

On 18 March 2009, a probation violation report was filed alleging that Defendant had failed to comply with the terms of his probation. Specifically, it was alleged that Defendant: (1) had

failed to complete his community service; and (2) was in arrears on his monetary conditions of probation.

On 16 April 2009, a probation violation hearing was held in Mecklenburg County Superior Court.<sup>1</sup> Defendant admitted to each of the violations, but denied that his violations were willful. The trial court found that Defendant's violations were without lawful excuse, revoked Defendant's probation, and activated his suspended sentence. Defendant appeals.

Defendant argues that the trial court abused its discretion by revoking his probation and activating his suspended sentence.

After careful review of the record, briefs and contentions of the parties, we affirm. 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 that:

Any violation of a valid condition of probation is sufficient to revoke defendant's probation. 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.

*State v. Tozzi*, 84 N.C. App. 517, 521, 353 S.E.2d 250, 253 (1987) (citations omitted).

At the hearing, the State presented the testimony of Defendant's probation officer, Kimberly Barnes. Barnes testified

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<sup>1</sup> Although the verbatim transcript states that the hearing occurred on 16 June 2009, this appears to be a clerical error.

that Defendant was unemployed from September to December 2008, and that during this period of time, she met with Defendant every week. Barnes stated that, at each meeting, she told Defendant to perform his community service. Barnes explained that she mentioned it every week "because he had not done any of his community service hours and I was trying to get his butt in gear and make him quit procrastinating [sic] and get some of those hours done." Defendant, however, failed to comply.

In *Tozzi*, this Court stated that:

[t]he 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.

*Id.* at 521, 353 S.E.2d at 253; see also *State v. Crouch*, 74 N.C. App. 565, 567, 328 S.E.2d 833, 835 (1985). Defendant testified that he failed to complete his community service because: (1) he had difficulties arriving at the first site of his community service due to transportation problems; (2) the second site of his community service required him to work four hours at a time, but he only wanted to work two to three hours at a time due to "appointments[;]" and (3) he miscalculated the hours he had completed, erroneously believing that he had completed the requisite community service. The trial court rejected Defendant's excuses and concluded that Defendant chose not to comply with the terms of his probation. See *State v. Williamson*, 61 N.C. App. 531, 535, 301 S.E.2d 423, 426 (1983) (the trial judge, sitting as the

finder of fact, may reject any or all of a defendant's evidence as untrue); *Tozzi*, 84 N.C. App. at 522, 353 S.E.2d at 253 ("Defendant's choices are not lawful excuses."). Based on the evidence presented, we cannot say that the trial court's determination was manifestly unsupported by reason. Thus, we conclude the trial court did not abuse its discretion in revoking Defendant's probation.

Because there were sufficient grounds to revoke Defendant's probation, consideration of Defendant's remaining probation violation is not required. Accordingly, we affirm.

Affirmed.

Judges STEPHENS and ERVIN concur.

Report per Rule 30(e).