

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA09-36

NORTH CAROLINA COURT OF APPEALS

Filed: 4 August 2009

STATE OF NORTH CAROLINA

v.

Hoke County
No. 07 CRS 50741

WAKEEM ALEXANDER JOHNSON

Appeal by defendant from judgment entered 22 July 2008 by Judge E. Lynn Johnson in Hoke County Superior Court. Heard in the Court of Appeals 20 July 2009.

Attorney General Roy Cooper, by Assistant Attorney General Karissa J. Davan, for the State.

Richard Croutharmel for defendant.

BRYANT, Judge.

Wakeem Alexander Johnson ("defendant") appeals from judgment entered upon the revocation of his probation. For the reasons stated herein, we dismiss defendant's appeal.

Facts

On 17 January 2008, defendant entered a guilty plea to possession with intent to sell or deliver marijuana. Pursuant to the plea agreement, the trial court sentenced defendant to a suspended term of six to eight months imprisonment and placed defendant on twenty-four months of supervised probation. On 1 April 2008, defendant's probation officer filed a probation

violation report alleging defendant violated the terms of his probation by: (1) testing positive for marijuana use on 12 February and 22 February 2008; (2) failing to report for weekly office visits during the weeks of 28 January, 4 February, and 25 February 2008; (3) failing to be present at his residence during curfew checks on 19 February, 3 March, and 7 March 2008; and (4) having about his person a "strong odor" of marijuana during a routine home visit on 4 February 2008.

Defendant first appeared before the trial court for a hearing on the probation violation report on 7 April 2008, whereupon he obtained a continuance to seek retained counsel and entered a waiver of appointed counsel. On 22 July 2008, the trial court held a hearing on the probation violation report wherein defendant represented himself. At the hearing, defendant admitted to each violation except the curfew violation. The trial court subsequently dismissed the curfew violation and found defendant's admitted violations of his probation were willful and without lawful excuse. The trial court activated defendant's sentence of six to eight months imprisonment, and recommended that defendant participate in the DART program. Defendant filed notice of appeal on 3 September 2008.

While not raised by the parties, we note defendant has not properly given notice of appeal from the judgment entered upon the revocation of his probation. The taking of an appeal in criminal

cases is governed by Rule 4 of the North Carolina Rules of Appellate Procedure. Rule 4 provides, in pertinent part:

Any party entitled by law to appeal from a judgment or order of a superior or district court rendered in a criminal action may take appeal by

(1) giving oral notice of appeal at trial, or

(2) filing notice of appeal with the clerk of superior court and serving copies thereof upon all adverse parties within 14 days after entry of the judgment or order or within 14 days after a ruling on a motion for appropriate relief made during the 14-day period following entry of the judgment or order.

N.C.R. App. P. 4(a) (2007). Giving proper notice of appeal "confers upon the appellate court the authority to act in a particular case." *Dogwood Dev. & Mgmt. Co. v. White Oak Transp. Co.*, 362 N.C. 191, 197, 657 S.E.2d 361, 364-65 (2008). "A jurisdictional default . . . precludes the appellate court from acting in any manner other than to dismiss the appeal." *Id.* at 197, 657 S.E.2d at 365.

Here, defendant did not give oral notice of appeal at the conclusion of the probation revocation hearing, nor did defendant enter written notice of appeal within fourteen days of entry of the judgment at issue. Defendant filed his *pro se* notice of appeal on 3 September 2008, forty-two days after the trial court's entry of its judgment revoking defendant's probation on 22 July 2008. Accordingly, we must dismiss defendant's appeal because defendant has not given proper notice of appeal and "this Court is without jurisdiction to hear the appeal." *State v. McCoy*, 171 N.C. App. 636, 638, 615 S.E.2d 319, 320, *appeal dismissed*, 360 N.C. 73, 622 S.E.2d 626 (2005).

Dismissed.

Chief Judge MARTIN and Judge ELMORE concur.

Report per Rule 30(e).