

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA10-130

NORTH CAROLINA COURT OF APPEALS

Filed: 7 September 2010

STATE OF NORTH CAROLINA

v.

Hoke County
No. 06 CRS 53014

CAMILLE LYNETT WASHINGTON

Appeal by defendant from judgment entered 17 September 2009 by Judge Douglas B. Sasser in Hoke County Superior Court. Heard in the Court of Appeals 23 August 2010.

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

Anne Bleyman for defendant-appellant.

Bryant, Judge.

Defendant appeals from judgment entered on 17 September 2009 revoking her probation and activating her suspended sentence of twenty-five to thirty-nine months imprisonment. For the reasons discussed herein, we affirm the judgment of the trial court.

On 24 January 2007, defendant pled guilty to assault with a deadly weapon inflicting serious injury. Defendant received a suspended sentence of twenty-five to thirty-nine months imprisonment, and was placed on supervised probation for thirty-six months.

On 4 June 2009, defendant's probation officer filed a probation violation report. The report alleged that defendant had willfully violated the monetary conditions of her probation and a special condition of probation, in that she had not obtained a psychiatric evaluation.

The probation revocation hearing was held on 17 September 2009. Defendant denied the willfulness of the first alleged violation and denied the second alleged violation. After hearing from the parties, the trial court found defendant in willful violation, revoked her probation, and activated her suspended sentence.

On appeal, defendant argues the trial court abused its discretion in revoking her probation as there was insufficient competent evidence of a willful violation.

This Court has held that "findings of a judge, if supported by competent evidence, and his judgment based thereon are not reviewable on appeal, unless there is a manifest abuse of discretion." *State v. Tennant*, 141 N.C. App. 524, 526, 540 S.E.2d 807, 808 (2000). An abuse of discretion occurs only "where the court's ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision." *State v. Campbell*, 359 N.C. 644, 673, 617 S.E.2d 1, 19 (2005), *cert. denied*, 547 U.S. 1073, 164 L. Ed. 2d 523 (2006).

To revoke a defendant's probation, the trial court need only find that the defendant has "willfully violated a valid condition of probation or that the defendant has violated without lawful

excuse a valid condition upon which the sentence was suspended." *State v. Hewett*, 270 N.C. 348, 353, 154 S.E.2d 476, 480 (1967). "Additionally, once the State has presented competent evidence establishing a defendant's failure to comply with the terms of probation, the burden is on the defendant to demonstrate through competent evidence an inability to comply with the terms." *State v. Terry*, 149 N.C. App. 434, 437-38, 562 S.E.2d 537, 540 (2002) (citation omitted). "If the trial court is then reasonably satisfied that the defendant has violated a condition upon which a prior sentence was suspended, it may within its sound discretion revoke the probation." *Id.* at 437-38, 562 S.E.2d at 540 (citation omitted).

Here, defendant's probation officer testified that defendant had not made any payments on her probation even though defendant had been working on and off. The probation officer further testified that defendant was required to get a psychiatric evaluation and defendant had not obtained the evaluation despite appointments being scheduled for her.

Defendant testified that she was not advised that she was required to get a psychiatric evaluation until mid to late 2008. Once an appointment was scheduled, defendant testified that she was informed the facility would not see her without health insurance. Defendant testified that she was able to schedule an appointment for an evaluation for 29 July 2009, but she was arrested on 27 July 2009. On cross-examination, defendant admitted that she received a copy of the judgment, which indicates she was required to obtain

a psychiatric evaluation. Additionally, defendant admitted that she had been working off and on, but had paid nothing on her probation.

The trial court did not abuse its discretion, as there was sufficient evidence to support revoking defendant's probation and activating her suspended sentence.

Affirmed.

Judges HUNTER, Robert C., and STEELMAN concur.

Reported per Rule 30(e).