

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA10-237

NORTH CAROLINA COURT OF APPEALS

Filed: 7 September 2010

STATE OF NORTH CAROLINA

v.

Mecklenburg County  
Nos. 09 CRS 57257  
09 CRS 60268

CHRISTOPHER BERNARD HAMMONDS,  
Defendant.

Appeal by defendant from judgments entered 8 October 2009 by Judge Eric L. Levinson in Mecklenburg County Superior Court. Heard in the Court of Appeals 30 August 2010.

*Attorney General Roy Cooper, by Assistant Attorney General Charlene Richardson, for the State.*

*Kevin P. Bradley for defendant-appellant.*

HUNTER, Robert C., Judge.

Defendant Christopher Bernard Hammonds appeals from the trial court's revocation of his probation and activation of his sentences. After careful review, we affirm.

Facts

Defendant pled guilty on 18 May 2009 to two counts of breaking and entering a motor vehicle and one count of intimidating a witness. The trial court consolidated the breaking and entering a motor vehicle charges into one judgment and sentenced defendant to eight to 10 months imprisonment, followed by a 10 to 12 month

sentence for the witness intimidation charge. The court suspended the sentences and imposed 36 months of supervised probation.

On 11 September 2009, defendant's probation officer filed two violation reports, alleging that defendant had violated the conditions of his probation by: (1) failing to comply with curfew restrictions; (2) leaving Mecklenburg County without permission; and (3) leaving the State without permission. Defendant and his attorney appeared in court on 8 October 2009 for a hearing on the allegations in the violation reports. The prosecutor asked defendant whether he admitted or denied the allegations, and defense counsel responded: "Admit, Your Honor. If I may be heard at the appropriate time." Defendant's probation officer then summarized the violations and asked the trial court to activate defendant's sentences. Defense counsel responded by asking the trial court to consider continuing defendant on probation. After hearing defense counsel's arguments, the court revoked defendant's probation and activated his sentences. Defendant timely appealed to this Court.

#### Discussion

On appeal, defendant challenges the trial court's finding that he waived the violation hearing and admitted the violations alleged in the probation violation reports. Defendant acknowledges his counsel's statements to the court, but nonetheless argues that the trial court erred in revoking his probation as "nothing in the record supports [a] finding that [defendant] personally chose to waive a hearing and admit the violations." Defendant contends that

the trial court's error violated his due process rights as well as his statutory rights under N.C. Gen. Stat. § 15A-1345 (2009).

N.C. Gen. Stat. § 15A-1345(e) provides in pertinent part: "Before revoking or extending probation, the court must, unless the probationer waives the hearing, hold a hearing to determine whether to revoke or extend probation and must make findings to support the decision and a summary record of the proceedings." In summarizing the informal nature of probation revocation hearings, this Court has stated:

A proceeding to revoke probation is not a criminal prosecution but is a proceeding solely for the determination by the court whether there has been a violation of a valid condition of probation so as to warrant putting into effect a sentence theretofore entered; and while notice in writing to defendant, and an opportunity for him to be heard, are necessary, the court is not bound by strict rules of evidence, and all that is required is that there be competent evidence reasonably sufficient to satisfy the judge in the exercise of a sound judicial discretion that the defendant had, without lawful excuse, willfully violated a valid condition of probation.

*State v. Pratt*, 21 N.C. App. 538, 540, 204 S.E.2d 906, 907 (1974).

This case is materially indistinguishable from *State v. Sellers*, 185 N.C. App. 726, 649 S.E.2d 656 (2007), where the defendant appealed the revocation of his probation,

arguing that the trial court erred by finding that he waived the probation violation hearing and admitted to violating his probation. Defendant contends that the trial court relied on the assertions of his counsel and failed to make an adequate personal inquiry regarding his waiver and admissions. Defendant argues that these decisions were personal decisions, akin to pleading guilty, that cannot be made

without his consent, and that he was prejudiced by deprivation of his due process and statutory rights.

*Id.* at 728, 649 S.E.2d at 657. In rejecting the defendant's argument, this Court held that, "[u]nlike when a defendant pleads guilty, there is no requirement that the trial court personally examine a defendant regarding his admission that he violated his probation." *Id.* at 728-29, 649 S.E.2d at 657. Consequently, the *Sellers* Court concluded that neither the defendant's due process nor his statutory rights were violated by the trial court's failure to make a personal inquiry regarding his waiver and admissions. *Id.* at 729, 649 S.E.2d at 657.

Here, as in *Sellers*, defendant appeared at the revocation hearing with his attorney, who "[a]dmit[ted]" the allegations in the violation reports. As we are bound by *Sellers*, "we conclude there was no violation of Defendant's right to due process or any statutory violation." *Id.* at 729, 649 S.E.2d at 657-58. Accordingly, the trial court's judgments are affirmed.

Affirmed.

Judges BRYANT and STEELMAN concur.

Report per Rule 30(e).