

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA10-555

NORTH CAROLINA COURT OF APPEALS

Filed: 1 March 2011

STATE OF NORTH CAROLINA

v.

Pitt County
No. 07-CRS-55832

REGINALD GIRARD HARRIS

Appeal by defendant from judgment entered 26 October 2009 by Judge Clifton W. Everett, Jr. in Pitt County Superior Court. Heard in the Court of Appeals 21 February 2011.

Attorney General Roy Cooper, by Associate Attorney General Jonathan D. Shaw, for the State.

*Appellate Defender Staples Hughes, by Assistant Appellate Defender Emily Davis, for defendant-appellant.*¹

ERVIN, Judge.

Defendant appeals from a judgment entered by the trial court revoking his probation and activating his suspended sentence. On appeal, Defendant contends that the trial court lacked jurisdiction to revoke his probation on the grounds that the trial court lacked the necessary subject matter jurisdiction. After careful consideration of Defendant's challenge to the trial court's

¹ Defendant was initially represented on appeal by Betsy J. Wolfenden, who filed a brief on Defendant's behalf on 29 July 2010. Subsequently, Ms. Wolfenden was disbarred for reasons that had no relation to her representation of Defendant. After Ms. Wolfenden's disbarment, Ms. Davis was appointed as substitute counsel for Defendant on 1 October 2010.

judgment in light of the record and the applicable law, we conclude that the trial court's judgment should be affirmed.

I. Factual Background

On 4 March 2009, Defendant entered a plea of guilty to one count of obtaining property by false pretenses in the Pitt County Superior Court. Based upon this plea, Judge W. Russell Duke, Jr., entered a judgment sentencing Defendant to a minimum term of eight months and a maximum term of ten months imprisonment in the custody of the North Carolina Department of Correction. However, Judge Duke suspended Defendant's sentence and placed him on supervised probation for a period of eighteen months, including six months of intensive probation, subject to a requirement that he perform 72 hours of community service within 180 days and pay restitution, comply with the usual terms and conditions of probation, and comply with the special conditions of probation relating to submission to warrantless searches for stolen goods, controlled substances, contraband, and "paraphernalia"; the use or possession of controlled substances; the provision of a breath, blood, or urine sample for drug testing purposes; submission to a therapeutic evaluation and compliance with all treatment recommendations; and the provision of a DNA sample.

On 28 April 2009, Defendant's probation officer executed a violation report alleging that Defendant had tested positive for the presence of marijuana. On 11 May 2009, Judge Duke found that Defendant had violated the terms and conditions of his probation, continued Defendant's probation, and modified those terms and

conditions in response to Defendant's violation. On 21 July 2009, Defendant's probation officer executed another violation report alleging that Defendant had failed to make required monetary payments, failed to report for the required therapeutic evaluation in a timely manner, and admitted having used marijuana. On 17 August 2009, Judge Duke found that Defendant had violated the terms and conditions of his probation, leading to the entry of another order continuing Defendant on probation and modifying the terms and conditions of Defendant's probation so as to require Defendant to serve a 56 hour active sentence. On 30 September 2009, Defendant's probation officer executed a third violation report alleging that Defendant failed to complete the required community service, failed to make required monetary payments in a timely manner, failed to provide a requested urine sample, and failed to complete recommended therapeutic treatment. On 26 October 2009, the trial court found that Defendant had willfully and without lawful excuse committed the violations of the terms and conditions of probation alleged in the violation report, revoked Defendant's probation, and activated Defendant's suspended sentence. Defendant noted an appeal to this Court from the trial court's judgment.

II. Legal Analysis

Defendant's sole appellate challenge to the trial court's judgment is the contention that the trial court lacked subject matter jurisdiction to revoke his probation because the violation report resulting in the revocation of his probation was not filed in compliance with N.C. Gen. Stat. § 15A-1344(f), which provides,

in pertinent part, that a court "may extend, modify, or revoke probation after the expiration of the period of probation if . . . [b]efore the expiration of the period of probation the State has filed a written violation report with the clerk indicating its intent to conduct a hearing on one or more violations of one or more conditions of probation." N.C. Gen. Stat. § 15A-1344(f)(1). According to its literal language, N.C. Gen. Stat. § 15A-1344(f)(1) only applies in the event that the extension, modification or revocation of probation occurs "after the expiration of the period of probation." "It is elementary that in the construction of a statute words are to be given their plain and ordinary meaning unless the context, or the history of the statute, requires otherwise." *State v. Wiggins*, 272 N.C. 147, 153, 158 S.E.2d 37, 42 (1967) (citations omitted), *cert. denied*, 390 U.S. 1028, 20 L. Ed. 2d 285, 88 S. Ct. 1418 (1968). In this case, Defendant's probation was revoked well before the expiration of his probationary period. For that reason, N.C. Gen. Stat. § 15A-1233(f) has no application to the issues before the Court in this case.

"When a sentence has been suspended and defendant placed on probation on certain named conditions, the court may, *at any time during the period of probation*, require defendant to appear before it, inquire into alleged violations of the conditions, and, if found to be true, place the suspended sentence into effect.'" *State v. Hicks*, 148 N.C. App. 203, 204, 557 S.E.2d 594, 595 (2001) (quoting *State v. Camp*, 299 N.C. 524, 527, 263 S.E.2d 592, 594 (1980)). According to the record before us in this case, Defendant

was served with the violation report and notice of the revocation hearing. Defendant appeared at the hearing without objecting in any way to the procedures utilized in connection with the State's attempt to have his probation revoked. At the hearing, Defendant admitted to having violated the terms and conditions of his probation as alleged in the violation report and attempted to persuade the trial court to refrain from revoking his probation. After considering the record developed at the revocation hearing, the trial court revoked Defendant's probation and activated his suspended sentence. All of these events occurred during Defendant's probationary period, so that there was no deficiency in the procedures utilized in connection with the revocation of Defendant's probation. Thus, since Defendant has not established that the trial court erred in connection with the revocation of his probation, the trial court's judgment revoking Defendant's probation and activating his suspended sentence should be, and hereby is, affirmed.

AFFIRMED.

Judges STEPHENS and BEASLEY concur.

Report per Rule 30(e).