

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA11-364
NORTH CAROLINA COURT OF APPEALS

Filed: 18 October 2011

STATE OF NORTH CAROLINA

v.

Cabarrus County
No. 08 CRS 7433

REDERI ORION PARKS

Appeal by defendant from judgment entered 9 December 2010
by Judge Theodore S. Royster in Cabarrus County Superior Court.
Heard in the Court of Appeals 19 September 2011.

*Attorney General Roy Cooper, by Assistant Attorney General
Kenneth A. Sack, for the State.*

*Edward Eldred, Attorney at Law, PLLC, by Edward Eldred,
for defendant-appellant.*

THIGPEN, Judge.

Defendant Rederi Orion Parks appeals from the judgment
entered following the revocation of his probation. Defendant
contends the trial court erred by revoking his probation in
spite of his claim his probation violations were not willful.
We affirm the trial court's judgment.

On 15 December 2008, defendant pled guilty to second-degree kidnapping. In exchange for defendant's plea, the State agreed to dismiss several charges and that defendant would receive a suspended sentence and be placed on 36 months of probation. Judge Ripley Rand entered a judgment consistent with the terms of defendant's plea agreement. The terms of the judgment also required defendant to pay \$1,026.50 in costs and fees. On 13 October 2010, Probation Officer Daniel S. Spicer filed a violation report alleging that defendant had violated the conditions of his probation by failing to report to a scheduled appointment on 27 September 2010, and by falling into arrears on his required payments.

The case came on for hearing on 9 December 2010. Mr. Spicer testified that defendant had missed the 3 September 2010 appointment because he had been arrested earlier in the day for failure to pay child support. Mr. Spicer further testified that defendant had paid about \$500.00 of his costs and fees, including payments in February, May, and July of 2010, but had fallen behind in his obligations. Defendant testified he was unable to pay the monetary obligations of his probation or his child support because he was unemployed. Defendant further claimed he had filled out forty job applications but was unable

to find employment, and he was pursuing a social security disability claim based on a back ailment that prevented him from working. After hearing defendant's testimony and the arguments of counsel, the trial court found defendant had willfully violated the terms of his probation, revoked probation, and activated the suspended sentence. Defendant gave notice of appeal.

In his two arguments on appeal, which we address together, defendant contends the trial court abused its discretion by concluding he willfully violated the terms of his probation. We disagree.

Because probation is "an act of grace by the State to one convicted of a crime[,] . . . an alleged violation of a probationary condition need not be proven beyond a reasonable doubt." *State v. Hill*, 132 N.C. App. 209, 211, 510 S.E.2d 413, 414 (1999) (citation and internal quotation marks omitted). "All that is required is that the evidence be sufficient to reasonably satisfy the judge in the exercise of his sound discretion that the defendant has willfully violated a valid condition of probation." *State v. White*, 129 N.C. App. 52, 58, 496 S.E.2d 842, 846 (1998).

"The trial judge has a duty, when the defendant does offer evidence of his ability or inability to make the money payments required [as a condition of probation], to make findings of fact which clearly show that he did consider and did evaluate the defendant's evidence." *State v. Williamson*, 61 N.C. App. 531, 535, 301 S.E.2d 423, 426 (1983) (citation omitted). "The trial judge, as the finder of the facts, is not required to accept defendant's evidence as true." *State v. Young*, 21 N.C. App. 316, 321, 204 S.E.2d 185, 188 (1974).

In this case, the evidence is unequivocal that defendant was in arrears on his monetary obligations, which constitutes two of the alleged probation violations. It is well-settled that "[a]ny violation of a valid condition of probation is sufficient to revoke [a] defendant's probation." *State v. Tozzi*, 84 N.C. App. 517, 521, 353 S.E.2d 250, 253 (1987).

The trial court heard defendant's testimony describing the reasons for his inability to pay, including his physical disability. Defendant's probation officer, however, testified that defendant had fallen behind in his financial obligations and never presented any documentation of his purported disability or inability to work. After hearing all of that evidence, as well as the arguments of counsel, the trial court

found defendant had willfully violated the conditions of his probation. "Although the [trial court] could have been more explicit in the findings by stating that [it] had considered and evaluated defendant's evidence of inability to make the required payments and found it insufficient to justify breach of the probation condition, we hold that his failure to do so does not constitute an abuse of discretion." *Williamson*, 61 N.C. App. at 535, 301 S.E.2d at 426. Accordingly, we affirm the trial court's judgment revoking defendant's probation.

AFFIRMED.

Chief Judge MARTIN and Judge HUNTER, JR. concur.

Report per Rule 30(e).