

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA12-108

NORTH CAROLINA COURT OF APPEALS

Filed: 16 October 2012

STATE OF NORTH CAROLINA

v.

Buncombe County
Nos. 10 CRS 1797-99, 51800-01,
51804-05, 700213

WILLIAM JAMES NEFF

Appeal by Defendant from judgments entered 13 October 2011 by Judge Alan Z. Thornburg in Buncombe County Superior Court. Heard in the Court of Appeals 8 October 2012.

Attorney General Roy Cooper, by Associate Attorney General Alesia M. Balshakova, for the State.

Mercedes O. Chut for Defendant.

STEPHENS, Judge.

Defendant William James Neff appeals from judgments entered upon revocation of probation and activation of his suspended sentences. We affirm.

On 17 September 2010, Defendant pled guilty to four counts each of obtaining property by false pretense and misdemeanor larceny. By separate judgments, the trial court sentenced Defendant to two consecutive terms of ten to twelve months imprisonment, suspended each sentence, and placed Defendant on supervised probation for 36 months. Conditions of probation for both judgments included requirements that Defendant report to his probation officer and not use, possess, or control any illegal drug. Defendant was also ordered to pay court costs, fines, and restitution in one of the obtaining property by false pretense cases.

Defendant's probation officer, Brannon Wilson, filed two violation reports on 29 September 2011, alleging that Defendant had violated the conditions of probation contained in each judgment. The reports alleged that Defendant violated the conditions of his probation by: (1) testing positive for marijuana and cocaine on three occasions; (2) failing to satisfy his monetary obligations; (3) failing to report to his probation officer; and (4) failing to participate in treatment and counseling.

At the probation revocation hearing on 13 October 2011, the court asked Defendant's counsel, "Would [Defendant] waive a

formal reading and admit?" Defendant's counsel responded, "He would waive and admit, your Honor." Wilson then testified that Defendant was served with the violation reports; tested positive for marijuana and cocaine in July, August, and September 2011; was in arrears for court and supervisory fees; was terminated from treatment due to non-compliance; and failed to comply with a substance abuse treatment program. When the court asked for Wilson's recommendation, he responded, "Revocation, your Honor."

Defense counsel informed the court that Defendant "basically turned himself in to Mr. Wilson and asked to be violated in the case." Counsel further informed the court that Defendant had paid "one of the cases off" and had returned some of the stolen property, and asked the court to run the sentences concurrently. The court found that Defendant willfully violated probation. Afterwards, Defendant informed the court that "[t]he only reason [he] didn't pay the second case off was because [he] was trying to get the [stolen property he returned] taken off and [he] couldn't find no way [sic] to get it done." Defendant asked the court to consolidate his sentences. By judgments entered 13 October 2011, the court revoked Defendant's probation and activated his original sentences. Defendant appeals.

Defendant first argues that the trial court erred in failing to conduct a revocation hearing pursuant to N.C. Gen. Stat. § 15A-1345(e) where Defendant did not formally waive his right to the hearing. After careful review, we conclude that the trial court did conduct a proper revocation hearing, and as a result, Defendant's contentions regarding waiver are inapposite.

Section 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. . . . At the hearing, evidence against the probationer must be disclosed to him, and the probationer may appear and speak in his own behalf, may present relevant information, and may confront and cross-examine adverse witnesses unless the court finds good cause for not allowing confrontation. The probationer is entitled to be represented by counsel at the hearing[.]

N.C. Gen. Stat. § 15A-1345(e) (2011). "[A] proceeding to revoke probation is not bound by strict rules of evidence and 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 omitted). In sum, "probation revocation proceedings are informal, summary

proceedings." *State v. Sparks*, 362 N.C. 181, 187, 657 S.E.2d 655, 659 (2008) (citations omitted).

Defendant contends that, given Defendant's constitutional and statutory rights to a hearing before revocation of his probation, the trial court had a duty to make an inquiry of Defendant about (1) whether he wished to waive his right to a hearing, and (2) whether any such waiver was intelligent, knowing, and voluntary. However, our review of the hearing transcript reveals that, while Defendant waived the formal reading of the violation report and admitted violating conditions of his probation, he did not waive his right to a hearing, and the trial court conducted a revocation hearing pursuant to section 15A-1345(e). Defendant was represented by counsel, the "evidence against [Defendant was] disclosed to him," "[he spoke] in his own behalf, . . . present[ed] relevant information, and [had the opportunity to] confront and cross-examine adverse witnesses [here, his probation officer]." N.C. Gen. Stat. § 15A-1345(e). Accordingly, we conclude that the court did conduct a revocation hearing which complied with section 15A-1345(e). Because we hold that the court did conduct a hearing, Defendant's arguments regarding waiver are inapposite.

Defendant also argues that revocation was improper because the State offered no evidence that his failure to meet his monetary obligations was willful. We disagree.

To revoke a defendant's probation, the evidence need only "reasonably satisfy the [trial court] in the exercise of [its] sound discretion that the defendant has willfully violated a valid condition of probation[.]" *State v. Hewett*, 270 N.C. 348, 353, 154 S.E.2d 476, 480 (1967). The breach of any one condition of probation is sufficient grounds to revoke a defendant's probation. *State v. Seay*, 59 N.C. App. 667, 670-71, 298 S.E.2d 53, 55 (1982), *disc. review denied*, 307 N.C. 701, 301 S.E.2d 394 (1983). A verified probation violation report is competent evidence that a violation occurred. *State v. Duncan*, 270 N.C. 241, 246, 154 S.E.2d 53, 58 (1967).

Here, the verified violation reports alleged that, by testing positive for marijuana and cocaine in July, August, and September 2011, Defendant willfully violated the condition of his probation that he not use any illegal drug. Wilson confirmed that Defendant tested positive for illegal drugs and Defendant admitted willfully violating his probation. Because this evidence establishing that Defendant breached one of the conditions of his probation was sufficient grounds for

revocation, we need not consider Defendant's argument regarding the remaining grounds for revocation found by the trial court. Accordingly, the judgments revoking Defendant's probation and activating his sentences are

AFFIRMED.

Chief Judge MARTIN and Judge ERVIN concur.

Report per Rule 30(e).