

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA12-135
NORTH CAROLINA COURT OF APPEALS

Filed: 18 September 2012

STATE OF NORTH CAROLINA

v.

Swain County
No. 09 CRS 1134

DENNIS DAVID GREEN

Appeal by Defendant from judgment dated 15 August 2011 by Judge Marvin Pope in Swain County Superior Court. Heard in the Court of Appeals 15 August 2012.

Attorney General Roy Cooper, by Assistant Attorney General Ann W. Matthews, for the State.

Hunt Law Group, P.C., by James A. Hunt, for Defendant.

STEPHENS, Judge.

In August 2010, Defendant Dennis David Green pled guilty to one charge of assaulting a government official. The trial court imposed a 150-day prison sentence, which was suspended subject to a supervised probation period of 36 months. On 27 April 2011, Green's probation officer filed a probation violation report alleging that Green had violated the terms of his probation. At a probation violation hearing in Swain County

Superior Court, the Honorable Marvin Pope presiding, Green waived his right to counsel, represented himself, and admitted that he had willfully violated the terms and conditions of his probation without just or valid excuse. As a result, the trial court revoked Green's probation and activated his suspended sentence. Green appeals.

On appeal, Green argues that the trial court erred in allowing him to proceed *pro se* at the probation revocation hearing without conducting a proper inquiry under N.C. Gen. Stat. § 15A-1242 and determining whether his waiver of the right to counsel was knowing and voluntary. However, this Court cannot reach the merits of Green's appeal because there is no evidence in the record before us showing that Green gave proper notice of appeal from the judgment revoking his probation and activating his sentence.

A party may appeal the judgment or order of a superior court in a criminal case by (1) "giving oral notice of appeal at trial," or (2) "filing notice of appeal with the clerk of superior court and serving copies thereof upon all adverse parties within fourteen days after entry of the judgment or order." N.C. R. App. P. 4(a)(1),(2). Additionally, the record on appeal in criminal actions must contain "a copy of the notice

of appeal or an appropriate entry or statement showing appeal taken orally." N.C. R. App. P. 9(a)(3)(h).

Our review of the record on appeal and the transcript of the probation revocation hearing reveals no evidence that Green gave oral notice of appeal. Further, the record does not contain any written notice of appeal. In his appellate brief, Green states that he "wrote the trial court stating that he wanted to appeal the judgment." However, that "writing" is not in the record, and, more importantly, there is nothing to show that the "writing" was filed with the clerk of superior court and served on the adverse party as required by Rule 4. N.C. R. App. P. 4(a)(2). While the record contains an Appellate Entries form that indicates notice of appeal was given, this Court has held that such a form is insufficient to satisfy Rule 4. *State v. Hughes*, ___ N.C. App. ___, ___, 707 S.E.2d 777, 779 (2011) ("[T]he fact that the record contains appellate entries does not, without more, suffice to show that Defendant properly appealed from the trial court's judgment to this Court."). Because Green has failed to show that he gave proper notice of appeal as required by Rule 4, this Court "lack[s] jurisdiction to consider [his] appeal, which must, therefore, be dismissed." *Id.*

DISMISSED.

Judges BRYANT and THIGPEN concur.

Report per Rule 30(e).