

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA12-1439  
NORTH CAROLINA COURT OF APPEALS

Filed: 3 September 2013

STATE OF NORTH CAROLINA

v.

Gaston County  
No. 11 CRS 56276

CHASTIS RAY GOMEZ NIXON

Appeal by Defendant from judgment entered 6 August 2012 by Judge Hugh B. Lewis in Gaston County Superior Court. Heard in the Court of Appeals 19 August 2013.

*Attorney General Roy Cooper, by Associate Attorney General Adrian Dellinger, for the State.*

*Don Willey for Defendant.*

DILLON, Judge.

Defendant appeals from a judgment entered upon revocation of his probation. Because the trial court entered the necessary written findings in support this decision, we affirm.

On 7 July 2011, Defendant pleaded guilty to assault on a female and assault by strangulation. The trial court suspended a prison sentence of eleven to fourteen months and placed Defendant on thirty-six months of supervised probation.

Violation reports filed on 30 July 2012 charged Defendant with failing to report to his probation officer, using marijuana, leaving his county of residence without approval, and failing to remain within the jurisdiction of the court without obtaining written permission to leave. The probation officer signed the reports on 8 and 10 August 2011, alleging violations committed in July and August of 2011.

At his revocation hearing, Defendant acknowledged "absconding the probation" and moved to activate his sentence subject to receiving credit for time he spent in confinement in Colorado. The State alleged that Defendant's Colorado confinement was based on "new criminal charges." When asked whether he had "a certificate from [Colorado] indicating that that was time being held specifically for this charge as opposed to other charges in that jurisdiction[,] " Defendant replied, "No, sir, Your Honor."

At the conclusion of the hearing, the court announced that, "based on [Defendant's] own motion to activate [his] sentence[,] the Court will activate the 11 to 14 months in the custody of the North Carolina D[A]C." The court credited Defendant with the 71 days of prior confinement certified in the 2011 judgment, but was "not persuaded by any argument relating to additional

time since none[ ] can be certified at this time.” Defendant gave notice of appeal in open court.

In his sole argument on appeal, Defendant contends that the trial court improperly revoked his probation based on his motion to activate his sentence “without making proper findings of fact to support the revocation.” He notes that the repeal of former N.C. Gen. Stat. § 15A-1341(c) eliminated a defendant’s right to elect to serve a prison sentence in lieu of submitting to probation. N.C. Gen. Stat. § 15A-1341(c) (1995), *repealed by* 1995 N.C. Sess. Laws 429, secs. 1, 5 (effective 1 January 1997). Absent an oral finding in open court that he violated at least one condition of probation, Defendant asserts that the court abused its discretion.

As an initial matter, we note that Defendant committed his offenses and his alleged probation violations prior to the 1 December 2011 effective date of the Justice Reinvestment Act of 2011 (JRA). *See State v. Hunnicutt*, \_\_ N.C. App. \_\_, \_\_, 740 S.E.2d 906, 911 (2013) (COA12-1018) (citing 2011 N.C. Sess. Laws 192, sec. 4.(d); 2011 N.C. Sess. Laws 412, sec. 2.5). Accordingly, the provisions of the JRA have no bearing on our review.<sup>1</sup> *Id.*

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<sup>1</sup> We note that the trial court marked the box on the judgment

In order to revoke probation, "[a]ll 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 findings of fact by the judge must show he exercised his discretion to that effect." *State v. Williamson*, 61 N.C. App. 531, 534, 301 S.E.2d 423, 426 (1983). Moreover, "[t]he minimum requirements of due process in a final probation revocation hearing" require written "findings of fact as to the evidence relied on" and the "reasons for revoking probation." *Id.* at 533-34, 301 S.E.2d at 425.

We find no merit in Defendant's argument. The trial court's written judgment incorporates the contents of the sworn violation reports and includes a finding "that the defendant

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form to find - as required by the JRA - that revocation was authorized "for the willful violation of the condition(s) that [Defendant] not commit any criminal offense, G.S. 15A-1343(b)(1), or abscond from supervision, G.S. 15A-1343(b)(3a) [.]". See 2011 N.C. Sess. Laws 192, sec. 4(b), (d). Because Defendant's violations occurred in 2011, however, the requirements for revocation under the JRA do not apply. *Hunnicuttt*, \_\_\_ N.C. App. at \_\_\_, 740 S.E.2d at 911. We further note that Defendant was not subject to the condition in N.C. Gen. Stat. § 15A-1343(b)(3a), which applies to offenses committed on or after 1 December 2011. 2011 N.C. Sess. Laws 412, sec. 2.5. Because the court also found that each of Defendant's violations was sufficient to support revocation, the erroneous finding was harmless.

violated each of the conditions of [his] probation as set forth" in the reports' five numbered paragraphs. *See generally State v. Duncan*, 270 N.C. 241, 246, 154 S.E.2d 53, 58 (1967) (deeming the verified violation report to be competent evidence of probation violations). The court further found that Defendant committed his violations "willfully and without valid excuse" and that "[e]ach violation is, in and of itself, a sufficient basis upon which this Court should revoke probation and activate the suspended sentence." These findings are more than adequate to support revocation. *See State v. Henderson*, 179 N.C. App. 191, 197, 632 S.E.2d 818, 822 (2006). Although the judgment includes a finding that Defendant "elects to have [his] probation revoked and sentence activated[,] " there is no indication that the court believed itself bound by Defendant's motion or otherwise failed to exercise its discretion.

AFFIRMED.

Judges GEER and ERVIN concur.

Report per Rule 30(e).