

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA12-544
NORTH CAROLINA COURT OF APPEALS

Filed: 6 November 2012

STATE OF NORTH CAROLINA

v.

Union County
No. 09CRS55852

DIANDRE HAKEEM GRIFFIN,
Defendant.

Appeal by defendant from final judgment revoking defendant's probation entered 2 December 2011 by Judge Joseph N. Crosswhite in Superior Court, Union County. Heard in the Court of Appeals 10 October 2012.

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

Gerding Blass, PLLC, by Danielle E. Blass, for defendant-appellant.

STROUD, Judge.

I. Background

Diandre Griffin ("defendant") was indicted on 1 February 2010 for assault with a deadly weapon with intent to kill and inflicting serious bodily injury. Defendant entered an "Alford" guilty plea to both charges on 14 February 2011. Defendant was

sentenced to 13-16 months of active time for assault inflicting bodily injury and a consecutive sentence of 20-24 months suspended for 26 months of supervised probation. After defendant tested positive for cocaine on 17 March 2011, Judge Kevin M. Bridges modified the terms of his probation, with defendant's consent, to require that he go to TASC substance abuse treatment. In three violation reports filed 10 May, 17 June, and 22 September, Defendant's probation officer charged him with numerous violations, including the positive drug test that was the cause of the initial modification. The Superior Court in Union County held a revocation hearing on 2 December 2011, where the trial judge found each violation was "valid, willful, and without excuse[, and that] each in and of itself is sufficient to justify revocation." Defendant gave oral notice of appeal in open court on that date.

II. Standard of Review

A proceeding to revoke probation is often regarded as informal or summary, and the court is not bound by strict rules of evidence. An alleged violation by a defendant of a condition upon which his sentence is suspended need not be proven beyond a reasonable doubt. All that is required is that the evidence be such as to reasonably satisfy the judge in the exercise of his sound discretion that the defendant has violated a valid condition upon which the sentence was suspended. The findings of

the judge, if supported by competent evidence, and his judgment based thereon are not reviewable on appeal, unless there is a manifest abuse of discretion.

State v. Tenant, 141 N.C. App. 524, 526, 540 S.E.2d 807, 808 (2000) (quotation marks, citations, and alterations omitted).

III. Analysis

Defendant timely appeals from the trial court's judgment revoking his probation and activating his sentence, challenging the trial court's findings on five of defendant's nine violations. Defendant also contends that the trial court violated defendant's rights under the Fifth Amendment's Double Jeopardy Clause when it revoked defendant's probation for testing positive for cocaine after modifying defendant's terms of probation for the same positive test. Defendant does not challenge the trial court's other findings in his brief. Therefore, we consider any objection to those findings abandoned. N.C.R. App. P. 28(b)(6) (2011).

"The breach of any single valid condition upon which the sentence was suspended will support an order activating the sentence." *State v. Braswell*, 283 N.C. 332, 337, 196 S.E.2d 185, 188 (1973) (citation omitted). Defendant does not challenge the court's findings that he willfully violated the conditions of his probation by absconding, failing to report,

and being absent from his residence during curfew. Any one of those breaches would "support an order activating [defendant's] sentence." *Id.* Since defendant does not contest them, any objection thereto is abandoned and the findings are binding on appeal. N.C.R. App. P. 28 (b)(6). Therefore, we hold that the trial court's decision to revoke defendant's probation was not a "manifest abuse of discretion." *Tenant*, 141 N.C. App. at 526, 540 S.E.2d at 808 (quotation marks and citation omitted).

AFFIRMED.

Judges ELMORE and BEASLEY concur.

Report per Rule 30(e).