

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA13-272  
NORTH CAROLINA COURT OF APPEALS

Filed: 3 December 2013

STATE OF NORTH CAROLINA

v.

BRADLEY CALDWELL, JR.,  
Defendant.

Wilkes County  
Nos. 12 CRS 686  
12 CRS 687  
12 CRS 688  
12 CRS 689

Appeal by defendant from judgments entered 25 September 2012 by Judge R. Stuart Albright in Wilkes County Superior Court. Heard in the Court of Appeals 29 October 2013.

*Attorney General Roy Cooper, by Assistant Attorney General Thomas E. Kelly, for the State.*

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

GEER, Judge.

Defendant Bradley Caldwell, Jr. appeals from judgments entered upon revocation of his probation. Because the trial court lacked the statutory authority to revoke defendant's probation in response to the violations found, we reverse and remand for further proceedings.

In December 2010, defendant pled guilty in Catawba County to possession of a stolen motor vehicle and attempted breaking or entering. He received consecutive suspended sentences of five to six months imprisonment and was placed on supervised probation for 30 months.

On 13 September 2011, defendant pled guilty in Burke County to possession with intent to manufacture, sell, or deliver a Schedule VI controlled substance, possession of a Schedule I controlled substance, and possession of a stolen motor vehicle. The Burke County Superior Court placed defendant on supervised probation for 30 months and imposed consecutive suspended sentences of eight to 10 months for possession of a stolen motor vehicle and six to eight months for the consolidated drug offenses.

Violation reports filed in Wilkes County on 30 July 2012 charged defendant with violating the conditions of probation associated with both his Catawba and Burke County convictions. Among other things, the reports alleged that defendant had violated the condition under N.C. Gen. Stat. § 15A-1343(b)(2) (2011) that he "[r]emain within the jurisdiction of the Court unless granted written permission to leave by the Court or the probation officer . . . ." Specifically, the reports alleged that "on or about July 29, 2012, this offender left his last

known place of residence at 343 Blue Heron Lane Wilkesboro, NC . . . [and] has not made his whereabouts known to his probation officer, therefore absconding supervision." Additionally, the reports filed in the two Catawba County cases alleged that defendant had committed a new criminal offense.

At the violation hearing held 25 September 2012, the State elected not to proceed on the allegation that defendant had committed a new criminal offense. Defendant admitted the remainder of the alleged violations and acknowledged that he committed the violations willfully, but he asked to be continued on probation. Noting that defendant had previously violated his probation and committed his Burke County offenses while on probation from Catawba County, the Wilkes County Superior Court revoked defendant's probation and activated defendant's suspended sentences, running them consecutively. Defendant timely appealed to this Court.

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Defendant first contends the Wilkes County Superior Court lacked subject matter jurisdiction to revoke his probation under N.C. Gen. Stat. § 15A-1344(a) (2011). Specifically, defendant argues that there was insufficient evidence that the Wilkes County Superior Court had the authority to revoke probation that

had been imposed in Catawba and Burke Counties. We find no merit to this claim.

In pertinent part, N.C. Gen. Stat. § 15A-1344(a) provides:

[P]robation may be . . . revoked by any judge entitled to sit in the court which imposed probation and who is resident or presiding in the . . . superior court district or set of districts as defined in G.S. 7A-41.1, as the case may be, where the sentence of probation was imposed, where the probationer violates probation, or where the probationer resides.

In the present case, defendant admitted the allegation that he "LEFT HIS LAST KNOWN PLACE OF RESIDENCE AT 343 BLUE HERON LANE WILKESBORO, NC" without informing his probation officer of his whereabouts. Moreover, the violation reports listed defendant's address as 343 Blue Heron Lane in Wilkes County. See *State v. Duncan*, 270 N.C. 241, 246, 154 S.E.2d 53, 58 (1967) (deeming a verified violation report to be competent evidence at a revocation hearing). Therefore, because the record contains evidence that defendant resided in Wilkes County, we hold that the Wilkes County Superior Court had jurisdiction under N.C. Gen. Stat. § 15A-1344(a).

Defendant next contends that, in light of the statutory amendments enacted by the Justice Reinvestment Act of 2011 ("JRA"), see 2011 N.C. Sess. Laws ch. 192, § 4 (effective

December 1, 2011), the trial court erred in revoking his probation. We agree.

The JRA amended N.C. Gen. Stat. § 15A-1344(a) to provide that the court "may only revoke probation" if the probationer commits a new crime, in violation of N.C. Gen. Stat. § 15A-1343(b)(1); "abscond[s]" supervision, in violation of N.C. Gen. Stat. § 15A-1343(b)(3a); or violates any condition of probation after serving two prior periods of confinement under N.C. Gen. Stat. § 15A-1344(d2). See N.C. Gen. Stat. § 15A-1344(a). However, the condition to "[n]ot abscond," under N.C. Gen. Stat. § 15A-1343(b)(3a), only applies "to offenses committed on or after [1 December 2011]." 2011 N.C. Sess. Laws ch. 412, § 2.5 (effective December 1, 2011). Similarly, the limited revoking authority of N.C. Gen. Stat. § 15A-1344(a) only "appl[ies] to probation violations occurring on or after [1 December 2011]." 2011 N.C. Sess. Laws ch. 412, § 2.5. Thus, in order for probation to be revoked in response to a violation of N.C. Gen. Stat. § 15A-1343(b)(3a), both the offense and the probation violation must occur on or after 1 December 2011. See *State v. Hunnicutt*, \_\_\_ N.C. App. \_\_\_, \_\_\_, 740 S.E.2d 906, 911 (2013) ("The effective date clause was later amended, however, to make the new absconding condition applicable only to offenses committed on or after 1 December 2011, while the limited

revoking authority remained effective for probation violations occurring on or after 1 December 2011." (citing 2011 N.C. Sess. Laws ch. 412, § 2.5)).

Here, the State abandoned the allegation that defendant had committed a new crime in violation of N.C. Gen. Stat. § 15A-1343(b)(1). Additionally, the violation reports show that defendant has not served two prior periods of confinement under N.C. Gen. Stat. § 15A-1344(d2). Thus, the trial court did not have the authority to revoke defendant's probation under two of the three permissible conditions under N.C. Gen. Stat. § 15A-1344(a).

As for the remaining condition under which defendant's probation could be revoked, a violation of N.C. Gen. Stat. § 15A-1343(b)(3a), it is only applicable if both the original offenses and the probation violations occurred on or after 1 December 2011. See *Hunnicuttt*, \_\_\_ N.C. App. at \_\_\_, 740 S.E.2d at 911. While defendant's probation violations occurred after 1 December 2011, defendant's offenses occurred before 1 December 2011. Because defendant's offenses occurred before 1 December 2011, the condition to "[n]ot abscond," under N.C. Gen. Stat. § 15A-1343(b)(3a) does not apply, and the trial court had no authority under N.C. Gen. Stat. § 15A-1344(a) to revoke probation for a violation of N.C. Gen. Stat. § 15A-1343(b)(3a).

Therefore, we hold that the trial court erred when it revoked defendant's probation "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)[.]" Accordingly, we reverse the trial court's judgments and remand for further proceedings consistent with this opinion.

Reversed and remanded.

Judges ERVIN and DILLON concur.

Report per Rule 30(e).