

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA13-462
NORTH CAROLINA COURT OF APPEALS

Filed: 17 December 2013

STATE OF NORTH CAROLINA

v.

Chatham County
Nos. 12 CRS 2780-83

KENNETH EUGENE ALSTON

Appeal by defendant from judgments entered 17 December 2012 by Judge Allen Baddour in Chatham County Superior Court. Heard in the Court of Appeals 9 October 2013.

Attorney General Roy Cooper, by Assistant Attorney General Christina S. Hayes, for the State.

Mary McCullers Reece, for defendant-appellant.

CALABRIA, Judge.

Kenneth Eugene Alston ("defendant") appeals from judgments entered upon revocation of his probation and activating his suspended sentences. We affirm.

On 1 August 2011, defendant pled guilty in Randolph County Superior Court to conspiracy to sell or deliver cocaine and the sale or delivery of cocaine. Defendant also pled guilty to two

counts of possession with intent to manufacture, sell, or deliver cocaine. The trial court sentenced defendant to two terms of a minimum of twenty to a maximum of twenty-four months and two terms of a minimum of eleven to a maximum of fourteen months. The sentences were to be served in the custody of the North Carolina Division of Adult Correction. However, the trial court suspended defendant's sentences and placed him on supervised probation for eighteen months. Defendant was also required to comply with conditions of probation. Defendant's probation was subsequently transferred to Chatham County.

On 4 October 2012, defendant's probation officer, Michael A. Oglesby ("Oglesby"), filed violation reports in Chatham County Superior Court for defendant's four cases. Specifically, Oglesby alleged, *inter alia*, that defendant violated his probation by failing to report for scheduled appointments; failing to pay court fees; driving while license revoked ("DWLR") in Randolph County on 25 August 2011; and incurring a conviction on 21 March 2012 for failing to notify the Department of Motor Vehicles of an address change.

At the 17 December 2012 hearing, defendant admitted to failing to meet his probation officer on the dates listed in the violation reports and failing to pay court fees. Defendant also

admitted that he was convicted of failing to notify the Department of Motor Vehicles of an address change. Defendant denied the willfulness of the alleged violations, and denied the effect of his conviction. Nevertheless, the trial court found defendant in willful violation of his probation regarding his missed appointments, failure to pay court costs, and his conviction for failure to notify the Department of Motor Vehicles of an address change. The court revoked defendant's probation and activated his sentences. Defendant appeals.

Defendant's sole argument on appeal is that the trial court erred in revoking his probation because Chatham County Superior Court lacked subject matter jurisdiction under N.C. Gen. Stat. § 15A-1344(a). Specifically, defendant argues that there was insufficient evidence for the trial court to find subject matter jurisdiction to revoke his probation because the evidence in his case did not satisfy the statutory requirements. We disagree.

N.C. Gen. Stat. § 15A-1344(a) (2011) sets forth the basis for a court's "authority to alter or revoke" probation:

probation may be . . . revoked by any judge entitled to sit in the court which imposed probation and who is resident or presiding in the district court district as defined in G.S. 7A-133 or 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.

"[T]he issue of a court's jurisdiction over a matter may be raised at any time, even for the first time on appeal or by a court *sua sponte*." *State v. Webber*, 190 N.C. App. 649, 650, 660 S.E.2d 621, 622 (2008) (citation omitted). "It is well settled that a court's jurisdiction to review a probationer's compliance with the terms of his probation is limited by statute." *State v. Reinhardt*, 183 N.C. App. 291, 292, 644 S.E.2d 26, 27 (2007) (citation omitted). "Where jurisdiction is statutory and the Legislature requires the Court to exercise its jurisdiction in a certain manner, to follow a certain procedure, or otherwise subjects the Court to certain limitations, an act of the Court beyond these limits is in excess of its jurisdiction." *State v. Gorman*, ___ N.C. App. ___, ___, 727 S.E.2d 731, 733 (2012) (citation omitted). "If the court was without authority, its judgment is void and of no effect." *Id.* (citation and ellipsis omitted). "An appellate court necessarily conducts a statutory analysis when analyzing whether a trial court has subject matter jurisdiction in a probation revocation hearing, and thus conducts a *de novo* review." *Id.* (citation omitted). N.C. Gen. Stat. § 15A-1346(a) (2011) states "a period of probation commences on the day it is imposed and runs concurrently with

any other period of probation, parole, or imprisonment to which the defendant is subject during that period.”

Defendant contends that since his sentences originated in Randolph County, Chatham County did not have jurisdiction to revoke his probation and activate his sentences. Defendant further contends that the evidence was unclear as to whether or when he violated his probation in Chatham County. Defendant insists that since his DWLR occurred in Randolph County and he was not supervised in Chatham County at the time of that violation, the Chatham County Superior Court lacked subject matter jurisdiction over his alleged probation violations.

Defendant is correct that his sentences originated in Randolph County. It is also true that the violation reports indicated that defendant's DWLR occurred 25 August 2011 in Randolph County and that defendant was convicted on 21 March 2012 for failure to notify the Department of Motor Vehicles of an address change. However, defendant's probation was immediately transferred from Randolph County to Chatham County on 1 August 2011. Therefore, defendant's violations occurred *after* his probation had been transferred to Chatham County. Regardless of where the violations occurred, defendant's probation was supervised in Chatham County when they occurred.

Oglesby, as defendant's probation officer, was actively handling defendant's case. Oglesby testified at the hearing in Chatham County that he had been in contact with defendant several times to discuss defendant's payments of court costs and to reschedule his missed appointments. Oglesby filed the violation reports with the Chatham County Clerk of Superior Court, and copies of those reports were sent to defendant at an address in Siler City, which is located in Chatham County. In addition, all the violation reports list Chatham County at the top and defendant signed them. Defendant's signature on all of them acknowledges receipt of the reports and indicates that he was not only present in Chatham County, but also that he established residency in Chatham County and had sufficient notice of the hearing.

Finally, defendant contends that the writ of *habeas corpus ad prosequendum* filed 10 December 2012 ("the writ") indicated that he was housed at Central Prison in Raleigh, not Chatham County, at the time of the hearing. N.C. Gen. Stat. § 15-10.3 (2011) states

[t]he district attorney, upon receipt of the written notice and request for a final disposition . . . shall make application to the court in which said charge is pending for a writ of habeas corpus ad prosequendum and the court upon such application shall

issue such writ to the Secretary of Public Safety requiring the prisoner to be delivered to said court to answer the pending charge and to stand trial on said charge[.]

The writ in the instant case originated from Chatham County Superior Court and specifically required defendant's delivery to Chatham County Superior Court on the date and time of the hearing. The probation violation charge was properly pending in Chatham County Superior Court, where defendant's probation was supervised.

Because defendant violated his probation shortly after it was transferred to Chatham County, and because defendant acknowledged receipt of the violation reports at his residence in Siler City, the probation violations were properly pending in Chatham County Superior Court. We hold that the Chatham County Superior Court had proper jurisdiction to revoke defendant's probation and activate his suspended sentences. We affirm.

Affirmed.

Judges ELMORE and STEPHENS concur.

Report per Rule 30(e).