

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA13-557  
NORTH CAROLINA COURT OF APPEALS

Filed: 19 November 2013

STATE OF NORTH CAROLINA

v. Wilkes County  
Nos. 10CRS052678  
11CRS42

NATHAN DANIEL CHURCH,  
Defendant.

On writ of certiorari to review judgment entered on or about 22 January 2013 by Judge Edgar B. Gregory in Superior Court, Wilkes County. Heard in the Court of Appeals 5 November 2013.

*Attorney General Roy A. Cooper III, by Assistant Attorney General Jason R. Rosser, for the State.*

*Appellate Defender Staples Hughes, by Assistant Appellate Defender Mary Cook, for defendant-appellant.*

STROUD, Judge.

Defendant pled guilty on 19 September 2011 to two counts of taking indecent liberties for offenses occurring on or before 18 July 2010. The court sentenced defendant to a term of imprisonment for sixteen to twenty months, and suspended the

sentence for thirty-six months while defendant was under supervised probation.

On 3 July 2012, defendant's probation officer filed a violation report, and on 7 November 2012, the court entered an order modifying the original judgment to require defendant to serve five months in the North Carolina Department of Adult Correction. On 21 November 2012, defendant's probation officer filed another violation report alleging defendant violated conditions of probation that he (1) not be away from his residence during hours set by the court or probation officer in that defendant was not at his residence on 19 November 2012 at 8:10 p.m. or on 20 November 2012, and (2) remain within the jurisdiction of the court unless granted written permission to leave by the court or probation officer in that defendant left his residence on or about 19 November 2012 without the approval or knowledge of his probation officer, failed to make his whereabouts known, and thus "absconded supervision."

At the hearing upon the violation report on 22 January 2013, defendant admitted to willfully committing the violations. The court concluded that defendant willfully and without lawful excuse committed the two violations. The court entered a

judgment revoking probation and activating the sentence of sixteen to twenty months.

Defendant, *pro se*, subsequently wrote a letter which was filed by the Wilkes County Clerk of Superior Court on 29 January 2013 in which he expressed a desire "to appeal my case." The trial court treated the letter as a notice of appeal and made appellate entries, including the appointment of counsel, on 1 February 2013. Defendant's counsel filed a record on appeal and a petition for writ of certiorari seeking review if defendant's handwritten notice of appeal failed to comport with the requirements of Appellate Rule 4 because it did not identify the judgment from which appeal was taken and contain a certificate of service upon the district attorney. We conclude the notice of appeal is deficient and we allow the petition.

Defendant contends the court erred by activating the sentence based upon a finding he absconded from supervision when the offenses for which he was sentenced occurred prior to 1 December 2011 and the violation occurred after that date. We agree. In *State v. Nolen*, \_\_\_ N.C. App. \_\_\_, 743 S.E.2d 729 (2013), we held the trial court lacked authority under the Justice Reinvestment Act of 2011 to revoke probation and activate a sentence for absconding from supervision when the

offense for which the defendant was sentenced occurred prior to 1 December 2011, the violation occurred after that date, the defendant had not committed a new crime in violation of N.C. Gen. Stat. § 15A-1343(b)(1) (2011), and the defendant had not served two periods of confinement in response to violation pursuant to N.C. Gen. Stat. § 15A-1344(d2). The State appropriately concedes that it is unable to distinguish *Nolen*, and that the present judgment must be vacated and the matter remanded for further proceedings.

We accordingly reverse the judgment and remand for further proceedings and entry of an appropriate judgment or order consistent with the provisions of N.C. Gen. Stat. § 15A-1344.

REVERSED and REMANDED.

Judges CALABRIA and STEELMAN concur.

Report per Rule 30(e).