

AN UNPUBLISHED OPINION OF THE NORTH CAROLINA COURT OF APPEALS  
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DISFAVORED, BUT MAY BE PERMITTED IN ACCORDANCE WITH THE  
PROVISIONS OF RULE 30(E)(3) OF THE NORTH CAROLINA RULES OF APPELLATE  
P R O C E E D U R E .

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA14-1275

Filed: 5 May 2015

Union County, No. 09 CRS 53667

STATE OF NORTH CAROLINA

v.

DARRYL LEE CLYBURN

Appeal by defendant from judgment entered 6 November 2013 by Judge  
Christopher W. Bragg in Union County Superior Court. Heard in the Court of  
Appeals 17 April 2015.

*Attorney General Roy Cooper, by Assistant Attorney General Joseph L. Hyde,  
for the State.*

*Appellate Defender Staples Hughes, by Assistant Appellate Defender Jillian C.  
Katz, for defendant-appellant.*

TYSON, Judge.

Darryl Lee Clyburn (“Defendant”) appeals from the trial court’s judgment revoking his probation and activating his suspended sentence. We reverse the judgment and remand for further proceedings.

I. Background

Defendant entered a plea of guilty to driving while impaired (“DWI”) on 24 February 2011. The trial court sentenced Defendant to six months of imprisonment, suspended for twelve months of supervised probation.

On 11 January 2012, Defendant’s probation officer filed a violation report alleging: (1) Defendant failed to pay his court fees; and (2) Defendant failed to comply with recommended treatment. Following a hearing, the trial court found that Defendant had violated the conditions of his probation, modified several conditions, and extended his probation for 18 months.

On 7 August 2013, Defendant’s probation officer filed a second violation report alleging: (1) Defendant failed to pay his supervision fees; and (2) on 13 June 2013, Defendant pled guilty to misdemeanor concealment of goods, and this offense occurred on 18 January 2013, while Defendant was on probation. On 2 October 2013, Defendant signed a waiver of counsel form. The trial court held a probation violation hearing on 6 November 2013. The trial court found that Defendant had violated the conditions of his probation, revoked his probation based on the new conviction, and activated Defendant’s suspended sentence. Defendant appeals.

II. Issues

Defendant argues, and the State concedes, that the trial court erred in revoking his probation based on his conviction for misdemeanor concealment of goods, which is a Class 3 misdemeanor. We agree.

III. Analysis

The Justice Reinvestment Act of 2011 (“the JRA”) places limits on a trial court’s authority to revoke a defendant’s probation. For probation violations occurring on or after 1 December 2011, a trial court may only revoke probation where a defendant: (1) commits a new crime in violation of N.C. Gen. Stat. § 15A-1343(b)(1); (2) absconds supervision in violation of N.C. Gen. Stat. § 15A-1343(b)(3a); or (3) violates any condition of probation after serving two prior periods of confinement in response to violation (“CRV”) under N.C. Gen. Stat. § 15A-1344(d2). N.C. Gen. Stat. § 15A-1344(a) (2013). However, the JRA provides “probation may not be revoked solely for conviction of a Class 3 misdemeanor.” N.C. Gen. Stat. § 15A-1344(d) (2013).

Defendant’s probation was revoked based on his new conviction for misdemeanor concealment of goods, a violation of N.C. Gen. Stat. § 14-72.1(a) (2013). A first conviction under subsection (a) is punishable as a Class 3 misdemeanor. N.C. Gen. Stat. § 14-72.1(e) (2013). Subsequent convictions under subsection (a) are punishable as Class 1 or 2 misdemeanors. *Id.*

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*Opinion of the Court*

Here, it appears that the trial court revoked Defendant's probation based solely on his conviction of a Class 3 misdemeanor. The State presented no evidence indicating that Defendant's concealment of goods conviction was his second or subsequent conviction pursuant to N.C. Gen. Stat. § 14-72.1. Conviction of a Class 3 misdemeanor is not a proper basis for probation revocation under the JRA. The trial court was without statutory authority to revoke Defendant's probation.

IV. Conclusion

In light of the provisions of the JRA, we reverse the trial court's judgment revoking Defendant's probation and remand the case for entry of an appropriate judgment for Defendant's violations consistent with the provisions of N.C. Gen. Stat. § 15A-1344. In light of our ruling and disposition, we need not address Defendant's second argument.

REVERSED AND REMANDED.

Judges BRYANT and DIETZ concur.

Report per Rule 30(e).