

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA14-906  
NORTH CAROLINA COURT OF APPEALS

Filed: 17 February 2015

STATE OF NORTH CAROLINA

v.

Moore County  
Nos. 12CRS1942-43

JOEL DILLS

Appeal by Defendant from judgments entered 30 April 2014 by Judge James M. Webb in Moore County Superior Court. Heard in the Court of Appeals 12 January 2015.

*Attorney General Roy A. Cooper, III, by Assistant Attorney General Andrew O. Furuseth, for the State.*

*The Exum Law Office, by Mary March Exum, for the Defendant.*

DILLON, Judge.

Joel Dills ("Defendant") appeals from two judgments entered upon revocation of his probation. Because the State's evidence supports the trial court's independent finding that Defendant committed a new criminal offense in violation of N.C. Gen. Stat. § 15A-1343(b)(1) (2013), and because this finding is sufficient to support revocation under N.C. Gen. Stat. 15A-1344(a) (2013), we affirm.

On 7 May 2012 Defendant pleaded guilty to felonious breaking or entering and felonious larceny. The trial court suspended consecutive prison terms totaling twelve to sixteen months and placed Defendant on twenty-four months of supervised probation. In response to multiple violations reported by his probation officer on 27 August 2012, the trial court modified Defendant's probation on 10 October 2012 by, *inter alia*, striking the community service requirement and ordering him to pay \$2,000 by 19 October 2012.

On 11 February 2014, the probation officer filed reports charging Defendant with violating the monetary conditions of his probation and the condition that he commit no new criminal offense. See N.C. Gen. Stat. § 15A-1343(b)(1) (2013). Specifically, the reports alleged that Defendant committed the crimes of possession of a firearm by a felon and possession of a stolen firearm on or about 15 August 2013. Additional violation reports filed 20 March 2014 charged Defendant with possessing oxycodone pills without a prescription and with committing the offense of possession of a schedule II controlled substance.

At his revocation hearing, Defendant admitted he was subject to pending criminal charges and had violated the monetary conditions of probation but denied possessing oxycodone or

committing the crimes alleged by his probation officer. After hearing the parties' evidence, the trial court announced that Defendant "unlawfully, willfully, [and] without legal justification violated the terms and conditions of his probation as is alleged in the violation reports, . . . and the Court specifically finds that he's committed a subsequent offense." In its judgments activating Defendant's sentences, the court found Defendant to have committed each of the violations alleged by his probation officer.

Defendant now claims that the trial court abused its discretion in revoking his probation. He notes that, under the provisions of the Justice Reinvestment Act of 2011 ("JRA"), the only charged violation that would support revocation was his committing a criminal offense in violation of N.C. Gen. Stat. § 15A-1343(b)(1). See N.C. Gen. Stat. § 15A-1344(a), (d2) (2013). Defendant contends that the trial court mistakenly believed that his "probation could be revoked for pending criminal charges[,] rather than an actual conviction. "Because the State failed to prove that [he] admitted or was convicted of any pending charges," Defendant argues, "there was no competent evidence to support [the court's] findings" that he violated the condition in § 15A-1343(b)(1).

We agree with Defendant that his case is governed by the applicable provisions of the JRA, as follows:

[F]or probation violations occurring on or after 1 December 2011, the JRA limited trial courts' authority to revoke probation to those circumstances in which the probationer: (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] under N.C. Gen. Stat. § 15A-1344(d2).

*State v. Nolen*, \_\_\_ N.C. App. \_\_\_, \_\_\_, 743 S.E.2d 729, 730 (2013) (citing N.C. Gen. Stat. § 15A-1344(a)). Therefore, of the several violations found by the trial court, Defendant was subject to revocation only for committing a new crime in violation of N.C. Gen. Stat. § 15A-1343(b)(1).

However, we find no merit in Defendant's contention that his probation could not be revoked for violating N.C. Gen. Stat. § 15A-1343(b)(1) unless he either admits to or is convicted of a criminal offense. Although pending criminal charges do not, of themselves, constitute a probation violation, the fact that a defendant has yet to be tried on pending charges is "irrelevant . . . where the judge upon revoking defendant's probation ma[kes] independent findings of his own as to the commission of these crimes." *State v. Monroe*, 83 N.C. App. 143, 145-46, 349 S.E.2d

315, 317 (1986), *cert. denied*, 322 N.C. 484, 370 S.E.2d 232 (1988). In the present case, the trial court heard evidence and made an independent finding that Defendant had "committed a subsequent offense," thereby violating N.C. Gen. Stat. 15A-1343(b)(1). See *id.* It is thus Defendant and not the trial court whose position reflects a "misapprehension of law[.]"

Defendant also claims the evidence did not support the trial court's decision to revoke his probation. As recently explained by our Supreme Court,

[a] probation revocation proceeding is not a formal criminal prosecution, and probationers thus have more limited due process rights. . . . Consistent with this reasoning, we have stated that a proceeding to revoke probation is not a criminal prosecution and is often regarded as informal or summary. . . . Thus, the alleged violation of a valid condition of probation need not be proven beyond a reasonable doubt. . . . Instead, all that is required in a hearing of this character is that the evidence be such as to reasonably satisfy the judge in the exercise of his sound discretion that the defendant has willfully violated a valid condition of probation.

*State v. Murchison*, 367 N.C. 461, \_\_\_, 758 S.E.2d 356, 358 (2014) (internal marks and citations omitted).

The probation officer testified that Defendant was charged with possession of a firearm by a felon and possession of a stolen firearm after sheriff's deputies retrieved a shotgun from the

residence shared by Defendant, his girlfriend, and his mother-in-law on 20 December 2013. A detective with the Moore County Sheriff's Office testified that he spoke to Defendant about the shotgun on 3 February 2014, at which time Defendant dictated and signed the following statement:

I bought the gun from Jonathan Tamayo about two weeks before the Deputy found the gun at the house. I bought/paid for the gun. I gave the money to [] my girlfriend to get the gun. I gave her \$40.00 to get the gun. The gun was a single shot 12 [gauge]. Tamayo said he got it from some guy and it was not stolen. I told him that I didn't want it if it was stolen. I told him I wanted [my girlfriend] to have it. Told him we would take it but he would have to give it to her because I am on probation.

Defendant's statement to the detective was admitted into evidence without objection. While we note that relevant hearsay is admissible at a revocation hearing under *Murchison*, it is well-established that "[a] statement made by [a] defendant and offered by the State against him is admissible as an exception to the hearsay rule as a statement of a party-opponent." *State v. Gregory*, 340 N.C. 365, 401, 459 S.E.2d 638, 658 (1995) (citing N.C. Gen. Stat. § 8C-1, Rule 801(d)(A)); see also *Murchison*, \_\_\_ N.C. at \_\_\_, 758 S.E.2d at 359 (upholding revocation based on police officer's "testimony reporting the statements of defendant's mother that defendant had broken into her home and

threatened defendant's girlfriend and her with a knife").

Possession of an object may be actual or constructive, exclusive or joint. *State v. Allen*, 279 N.C. 406, 412, 183 S.E.2d 680, 684 (1971). A defendant "has possession of the contraband material within the meaning of the law when he has both the power and intent to control its disposition or use." *State v. Harvey*, 281 N.C. 1, 12, 187 S.E.2d 706, 714 (1972). In the present case, Defendant's written account of purchasing the shotgun shows not only Defendant's power and intent to control the disposition of a firearm but his actual control thereof in giving it to his girlfriend. Defendant's avowed actions while on probation for two felony convictions constitute the offense of possession of the shotgun by a felon under N.C. Gen. Stat. § 14-415.1(a). See *State v. Wood*, 185 N.C. App. 227, 235, 647 S.E.2d 679, 686 (2007) ("[T]he State need only prove . . . (1) defendant was previously convicted of a felony; and (2) thereafter possessed a firearm."). Therefore, the trial court did not abuse its discretion in finding this violation.

The trial court further found that (1) Defendant's probation was subject to revocation "for the willful violation of the condition[] that he[] not commit any criminal offense, G.S. § 15A-1343(b)(1)," and that (2) each of Defendant's violations was, "in

and of itself, a sufficient basis upon which this [c]ourt should revoke probation and activate the suspended sentence." See *State v. Braswell*, 283 N.C. 332, 337, 196 S.E.2d 185, 188 (1973) ("The breach of any single valid condition upon which the sentence was suspended will support an order activating the sentence."). Because the evidence supports the finding that Defendant committed the offense of possession of a firearm by a felon, any error as to his remaining violations is harmless. See *id.* Accordingly, the judgments are hereby affirmed.

AFFIRMED.

Judges ELMORE and STEELMAN concur.

Report per Rule 30(e).