

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA02-626

NORTH CAROLINA COURT OF APPEALS

Filed: 31 December 2002

STATE OF NORTH CAROLINA

v.

Mecklenburg County
No. 00 CRS 030098

DAVID VINCENT GARRETTE

Appeal by defendant from judgment dated 10 October 2001 by Judge Timothy S. Kincaid in Mecklenburg County Superior Court. Heard in the Court of Appeals 30 December 2002.

Attorney General Roy Cooper, by Assistant Attorney General Bertha L. Fields, for the State.

Gilda C. Rodriguez for defendant appellant.

GREENE, Judge.

David Vincent Garrette (Defendant) appeals from a "Judgment and Commitment upon Revocation of Probation" dated 10 October 2001.

Defendant pled guilty to common law robbery, and the trial court suspended his active term of ten-to-twelve months imprisonment. As a result, the trial court also placed Defendant on supervised probation for thirty-six months, with the first six months of his probationary period to be spent in an intensive supervision program. On or about 10 September 2001, Defendant's probation officer, Carl R. Sparks (Sparks), filed a violation

report, alleging Defendant had violated the following terms and conditions of probation: (1) Defendant tested positive for cocaine on 13 March, 24 April, and 28 May 2001 and admitted to cocaine use on 10 June 2001, in violation of special condition of probation #13; (2) Defendant failed to report to Sparks on 20 March, 17 April, 19 June, 10 July, 24 July, and 21 August 2001, in violation of regular condition of probation #6; (3) Defendant violated curfew on 11 March, 19 March, 14 June, 5 July, 12 July, 16 July, 26 July, 8 August, and 13 September 2001, in violation of special condition of probation #3(h); and (4) Defendant was \$585.00 in arrears on his monetary obligation to the trial court, in violation of the monetary condition of probation.

This matter was heard in the superior court on 10 October 2001. Defendant admitted to testing positive to cocaine as alleged in the probation violation report. Defendant also admitted he failed to report to Sparks but denied his failure was willful. Defendant denied the allegations of the report as to his failure to abide by curfew as to the 11 March, 19 March, and 14 June 2001 violations and moved to dismiss the remaining curfew violations as being beyond the scope of his intensive probation. Finally, Defendant admitted to being in arrears on his monetary obligation but denied willfulness.

At the outset, the trial court allowed Defendant's motion to dismiss the allegations in the violation report with regard to violations of the terms of intensive probation that would have occurred after the six-month probationary period expired. Sparks

testified he met with Defendant on or about 2 January 2001, at which time he explained the terms and conditions of his probation. Sparks told Defendant he was to report to his office every Tuesday from 12:30 to 2:00 p.m. Defendant subsequently missed several scheduled appointments and failed to contact Sparks' office prior to the missed appointments. Sparks testified Defendant had told him he missed his 17 April 2001 scheduled meeting because he overslept. Defendant's stated reason for missing his 19 June and 24 July 2001 appointments was he was at the hospital. Sparks also testified that Defendant told him on 11 July 2001, he had missed his 10 July 2001 appointment because he had been robbed. Finally, Sparks testified though Defendant paid \$150.00 during the time he was on probation, he was still some \$585.00 in arrears.

At the close of the State's evidence, the trial court allowed Defendant's motion to dismiss those allegations in the probation violation report as to Defendant's violation of curfew set by Sparks due to the State's failure to proffer any evidence in support thereof. Defendant then presented evidence which tended to show he did indeed fail to meet with Sparks on several occasions. Defendant, however, testified he missed the appointment because he either overslept or was at the veteran's hospital. Defendant explained he was disabled and taking prescription medication which caused drowsiness and lack of coordination. In addition, Defendant explained he missed another appointment after being beaten during a robbery that occurred just days before the scheduled appointment. With regard to his monetary obligations, Defendant testified he was

unable to make all of his payments because of personal living expenses, and college and personal loans.

At the close of all of the evidence, the trial court found Defendant had willfully violated the terms and conditions of probation as listed in the remaining allegations of the September 2001 probation violation report. As a result, the trial court revoked Defendant's probation and activated his suspended sentence.

The sole issue before this Court is whether there was sufficient evidence to show Defendant had violated a valid condition of his probation, and that the violation was willful and without lawful excuse.

After a thorough review of the record, we determine there was plenary evidence before the trial court to support the trial court's findings in this regard. While the minimum requirements of due process require the State to present evidence to show the willful violation of probation, such a requirement may be waived by a defendant's "in-court admission of the willful or without lawful excuse violation as contained in the written notice (or report) of violation." *State v. Williamson*, 61 N.C. App. 531, 533, 301 S.E.2d 423, 425 (1983). It is well settled that "[a]ny violation of a valid condition of probation is sufficient to revoke [a] defendant's probation." *State v. Tozzi*, 84 N.C. App. 517, 521, 353 S.E.2d 250, 253 (1987).

In this case, Defendant admitted unequivocally to testing positive for cocaine use. Significantly, Defendant did not present

any evidence this violation of probation was not willful or without lawful excuse. While Defendant rests his argument upon the sufficiency of the evidence as to violating other conditions of his probation, Defendant's admission, without lawful excuse, he violated the condition of probation requiring him to not use or possess illegal drugs was sufficient evidence to support the trial court's revocation of his probation. In addition, there was sufficient evidence Defendant willfully failed to attend scheduled appointments with his probation officer and to meet his monetary conditions of probation. Although Defendant presented numerous excuses for his failure to comply with those terms and conditions of probation, the trial court was not required to accept his evidence as true. *Williamson*, 61 N.C. App. at 535, 301 S.E.2d at 426. Hence, the trial court did not err in revoking Defendant's probation and activating his suspended sentence.

The judgment of the trial court therefore is affirmed.

Affirmed.

Judges TIMMONS-GOODSON and TYSON concur.

Report per Rule 30(e).