

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA05-328

NORTH CAROLINA COURT OF APPEALS

Filed: 20 December 2005

STATE OF NORTH CAROLINA

v.

RICHARD LEE EDGE

Cumberland County
Nos. 99 CRS 72607,
72612-19

Appeal by defendant from judgments entered 23 August 2004 by Judge Gregory A. Weeks in Cumberland County Superior Court. Heard in the Court of Appeals 28 November 2005.

Attorney General Roy A. Cooper, III, by Assistant Attorney General Mary S. Mercer, for the State.

Appellate Defender Staples Hughes, by Assistant Appellate Defender Matthew D. Wunsche, for defendant-appellant.

JACKSON, Judge.

On 26 April 2000, defendant pled guilty pursuant to a plea agreement to attempting to obtain property by false pretenses, obtaining property by false pretenses, and eight counts of making a false bomb report. Defendant's sentences were suspended and he was placed on supervised probation for thirty-six months. Defendant was ordered to pay \$1,680.00 as a condition of his probation. The amount was later modified to \$1,580.00.

On 15 May 2003, probation violation reports were filed alleging that defendant had failed to comply with the monetary term

of his probation. Specifically, the report alleged that defendant was \$1,526.00 in arrears, and had only paid \$54.00 since the date of judgment.

On 23 August 2004, a probation violation hearing was held in Cumberland County Superior Court. Defendant admitted that he had failed to comply with the monetary obligation of his probation, but denied the willfulness of the violation. Defendant testified that he had "[d]epression and anxiety disorder and I have a bullet in my back that's causing nerve damage to my right leg." Defendant argued that as a result he was on various prescription medications, was disabled and could not work, and thus could not make his probation payments. He also testified that he was on probation in other cases, and that money he sent might have been credited towards those obligations rather than his obligation in this case. However, the trial court found that defendant willfully violated the terms of his probation. Accordingly, the trial court revoked defendant's probation and activated his suspended sentences. Defendant appeals.

Defendant argues the trial court erred by concluding that he willfully violated his probation. Defendant contends the evidence demonstrated that he had persistent psychological and physical ailments which prevented him from maintaining employment and complying with the monetary conditions of his probation. See *State v. Hill*, 132 N.C. App. 209, 510 S.E.2d 413 (1999).

After careful review of the record, briefs and contentions of the parties, we find no error. This Court has stated:

Any violation of a valid condition of probation is sufficient to revoke defendant's probation. All that is required to revoke probation is evidence satisfying the trial court in its discretion that the defendant violated a valid condition of probation without lawful excuse. The burden is on defendant to present competent evidence of his inability to comply with the conditions of probation; and that otherwise, evidence of defendant's failure to comply may justify a finding that defendant's failure to comply was wilful or without lawful excuse.

State v. Tozzi, 84 N.C. App. 517, 521, 353 S.E.2d 250, 253 (1987) (internal citations omitted).

In *Hill*, cited by defendant, this Court vacated the defendant's probation revocation because the trial court refused to consider evidence demonstrating that the defendant's health problems prevented him from both providing restitution and completing his community service requirements, and because the trial court failed to find as fact that defendant did not have a lawful excuse for his violation. *Hill*, 132 N.C. App. at 213, 510 S.E.2d at 415. This Court stated that "[i]n applying the 'lawful excuse' rule, a trial court is mandated to consider facts brought forth by the defendant which demonstrate that he has a lawful excuse for his probation violation." *Id.* at 212, 510 S.E.2d at 415 (citing *State v. Smith*, 43 N.C. App. 727, 259 S.E.2d 805 (1979)).

In the case *sub judice*, defendant similarly offered evidence of an inability to comply with the monetary terms of his probation due to health issues. Defendant was permitted to testify concerning his previous gunshot injury, and the fact that he had

been on short and long term disability while living in Minnesota. In addition, the State's witness testified that Defendant and his probation officer in Minnesota told her that he was receiving disability payments, and that he repeatedly complained of medical problems which prevented him from working. However, the State's witness testified that neither Defendant nor his probation officer were ever able to provide her with documentation regarding his alleged medical problems and the limitations they placed upon him. The court allowed into evidence two North Carolina Division of Mental Health psychiatric reports on Defendant, from December 1999 and July 2004. The reports indicated that defendant had depression and some minor personality disorders, both of which were deemed partially related to his current situation and partially related to his character. The trial court considered defendant's testimony and evidence, but rejected it, finding that "what the evidence in this case demonstrates to me is an attempt [sic] to manipulate on the part of the defendant" Based on this finding, the court concluded that the violation was willful and revoked defendant's probation.

When revoking an individual's probation, the trial court need only be "reasonably satisfie[d] . . . that the defendant has violated a valid condition upon which the sentence was suspended." *State v. Freeman*, 47 N.C. App. 171, 175, 266 S.E.2d 723, 725, *disc. review denied*, 301 N.C. 99, 273 S.E.2d 304 (1980); *see also*, *State v. White*, 129 N.C. App. 52, 58, 496 S.E.2d 842, 846 (1998) ("All that is required is that the evidence be sufficient to reasonably

satisfy the judge in the exercise of his sound discretion that the defendant has willfully violated a valid condition of probation.”), *aff’d in part, review dismissed in part*, 350 N.C. 302, 512 S.E.2d 424 (1999). In this case, the trial court weighed the limited available evidence of defendant’s purported mental illness and disabilities with his acts of manipulation, his crimes, and his violations of the conditions of probation. The decision to revoke probation is one that rests within the sound discretion of the trial court, and the decision will not be reversed absent a manifest abuse of discretion. *State v. Tennant*, 141 N.C. App. 524, 526, 540 S.E.2d 807, 808 (2000).

We conclude the trial court did not abuse its discretion in revoking Defendant's probation. Accordingly, we find no error.

No error.

Judges WYNN and CALABRIA concur.

Report per Rule 30(e).