

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA13-576
NORTH CAROLINA COURT OF APPEALS

Filed: 17 December 2013

STATE OF NORTH CAROLINA

v.

Moore County
No. 11 CRS 53422

DUSTIN GERARD EUSTON

Appeal by defendant from judgment entered 25 January 2013 by Judge James M. Webb in Moore County Superior Court. Heard in the Court of Appeals 23 October 2013.

Attorney General Roy Cooper, by Special Deputy Attorney General Lisa G. Corbett, for the State.

The Exum Law Office, by Mary March Exum, for defendant-appellant.

HUNTER, Robert C., Judge.

Defendant Dustin Gerard Euston appeals the judgment entered 25 January 2013 revoking his probation and sentencing him to a term of six to eight months imprisonment. On appeal, defendant argues that the trial court erred by revoking his probation on the basis that he had committed a new criminal offense and by failing to make sufficient independent findings of fact. After careful review, we affirm the trial court's judgment.

Background

On 10 October 2012, defendant pled guilty to one count of embezzlement. Pursuant to a plea agreement, defendant was sentenced to six to eight months imprisonment, but his sentence was suspended, and he was placed on supervised probation for thirty months. In addition to the regular conditions of probation imposed pursuant to N.C. Gen. Stat. § 15A-1343(b) that defendant commit no criminal offense in any jurisdiction or possess a firearm, the trial court imposed the following special conditions: (1) defendant was required to pay restitution to his employer; (2) defendant had to complete 72 hours of community service; (3) defendant was prohibited from having any contact with his former employer; (4) defendant was required to observe curfew set by his probation officer; and (5) defendant had to pay child support.

On 19 December 2012, defendant's probation officer T.J. Hawthorne ("Officer Hawthorne") filed a probation violation report alleging that defendant violated the conditions of his probation by missing curfew, failing to pay court fees, failing to pay probation supervision fees, possessing a firearm, and being charged with possession of a firearm. Based on the alleged violations, the trial court issued an arrest warrant for

defendant. On 16 January 2013, Officer Hawthorne filed an additional violation report alleging that defendant violated the condition of his probation that he commit no criminal offense by being charged with possession of stolen goods. Both matters came on for hearing on 24 January 2013 in Moore County Superior Court.

At the hearing, Officer Hawthorne testified about defendant's being arrears in payments and missing curfew. He also reported that defendant had been charged with possession of a firearm by a felon and possession of stolen property. In addition, the State offered the testimony of Lieutenant Darren Ritter ("Lt. Ritter"), an officer with the Moore County Sherriff's Office. Lt. Ritter testified that on 17 December 2012, he executed a search warrant with the Pinehurst Police Department at defendant's residence to recover stolen property taken during recent break-ins in the area. During the search, Lt. Ritter opened a book bag defendant claimed was his and found, among other things, two handguns and some pieces of mail addressed to defendant. In addition to the two handguns, Lt. Ritter also recovered golf clubs and golf bags that were allegedly stolen during recent break-ins in Pinehurst. Defendant testified and admitted that the golf equipment was in

his possession when the officers executed the search warrant. However, he claimed that he was unaware it was stolen and alleged that he bought it from a coworker. Defendant denied taking part in the break-ins. Defendant was charged with possession of stolen property.

Based on the evidence presented at the hearing, Judge Webb revoked defendant's probation and ordered that defendant be imprisoned for 6 to 8 months, with 40 days of credit. Specifically, on a preprinted standard form, the trial court found that defendant violated all alleged violations in the two reports, including the willful violation that defendant commit no criminal offense. Defendant timely appealed.

Arguments

Defendant first argues that the trial court erred in revoking his probation based on the finding that defendant committed a new criminal offense. Specifically, defendant contends that the State failed to produce competent, non-hearsay evidence to support the revocation. We disagree.

Initially, it should be noted that our standard of review for the revocation of probation is governed by the following:

A proceeding to revoke probation is often regarded as informal or summary, and the [trial] court is not bound by strict rules of evidence. An alleged violation by a defendant of a condition upon which his

sentence is suspended need not be proven beyond a reasonable doubt. All that is required is that the evidence be such as to *reasonably satisfy* the judge in the exercise of his sound discretion that the defendant has violated a valid condition upon which the sentence was suspended. The findings of the judge, if supported by competent evidence, and his judgment based thereon are not reviewable on appeal, unless there is a manifest abuse of discretion.

State v. Tennant, 141 N.C. App. 524, 526, 540 S.E.2d 807, 808 (2000) (emphasis added) (citations omitted). As noted, the terms of defendant's probation required that he "[c]ommit no criminal offense in any jurisdiction[,]” and our General Statutes specifically authorize the trial judge to revoke probation upon determining that this condition has been violated. N.C. Gen. Stat. § 15A-1344(a) (2011); N.C. Gen. Stat. § 15A-1343 (b)(1) (2011).

While a trial court may not revoke a defendant's probation solely on a pending charge, *State v. Causby*, 269 N.C. 747, 749, 153 S.E.2d 467, 469 (1967), a trial court may revoke probation based on its own independent judgment and findings that a defendant committed a criminal offense, *State v. Monroe*, 83 N.C. App. 143, 145-46, 349 S.E.2d 315, 317 (1986). The State's evidence here regarding the allegation that defendant violated his probation by being in possession of stolen property included the hearsay testimony of Officer Hawthorne who claimed that he

had spoken with the officers who executed the search warrant at defendant's residence. While Officer Hawthorne's testimony, by itself, may have been insufficient to support the order of revocation, additional evidence presented at the hearing was competent enough to "reasonably satisfy the judge in the exercise of his sound discretion that [defendant had willfully] violated," *State v. Hewett*, 270 N.C. 348, 356, 154 S.E.2d 476, 482 (1967), a condition of his probation. Lt. Ritter testified about his first-hand knowledge concerning the execution of the search warrant and the stolen property allegedly found in defendant's residence. Moreover, defendant admitted that the golf clubs and bags were in his possession at the time the search warrant was executed. While he contended that he lawfully purchased the golf equipment, there was sufficient, competent evidence presented at the hearing to support the trial court's determination that defendant committed the offense of possessing stolen property. Therefore, defendant is unable to show that the trial court abused its discretion in revoking his probation.

Next, defendant argues that the trial court erred in revoking his probation without making sufficient independent findings of fact to support its conclusion that defendant

committed a new criminal offense. We disagree.

Pursuant to N.C. Gen. Stat. § 15A-1345(e) (2011), "[b]efore revoking or extending probation, [a trial] court must, unless the probationer waives the hearing, hold a hearing to determine whether to revoke or extend probation and must make findings to support the decision[.]" This Court has previously held that findings noted by the trial court on preprinted, standard forms are sufficient to comply with section 15A-1345(e). *State v. Henderson*, 179 N.C. App. 191, 197, 632 S.E.2d 818, 822 (2006). Here, the trial court stated, albeit by checking boxes on a preprinted form, that: (1) it considered the record and the evidence offered by the State and defendant; (2) defendant was charged with violating the conditions of probation alleged in the violation reports, which were incorporated by reference; (3) it was reasonably satisfied in its discretion that defendant violated each of the conditions alleged in the violation reports; and (4) it was authorized to revoke probation for the willful violation of the condition that defendant not commit any criminal offense pursuant to section 15A-1343(b)(1). "[A]lthough we encourage trial courts to be explicit in their findings by stating that they have considered and evaluated the defendant's evidence and found it insufficient to justify breach

of the probation condition," *State v. Belcher*, 173 N.C. App. 620, 625, 619 S.E.2d 567, 570 (2005), we conclude that the findings on the preprinted form in addition to the probation violation reports incorporated by reference were sufficient to justify revocation of defendant's probation. Thus, we affirm the trial court's judgment revoking defendant's probation.

Conclusion

Based on the foregoing reasons, we affirm the trial court's judgment revoking defendant's probation.

AFFIRMED.

Judges CALABRIA and ROBERT N. HUNTER, JR. concur.

Report per Rule 30(e).