

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-1186

Filed: 5 September 2017

Cumberland County, No. 14 CRS 59675

STATE OF NORTH CAROLINA

v.

MARQUIS ANTOINE BATISTE

Appeal by defendant from judgment entered 19 July 2016 by Judge Thomas H. Lock in Cumberland County Superior Court. Heard in the Court of Appeals 8 August 2017.

*Attorney General Joshua H. Stein, by Assistant Attorney General Brenda Eaddy, for the State.*

*Andrew K. Yu, for defendant-appellant.*

CALABRIA, Judge.

Marquis Antoine Batiste (“defendant”) appeals from a judgment revoking his probation upon a conclusion that he absconded from supervision. Because the evidence does not support the trial court’s conclusion that defendant absconded from supervision, we reverse.

I. Factual and Procedural Background

STATE V. BATISTE

*Opinion of the Court*

On 10 September 2015, defendant entered an *Alford* plea to one count of possession of a firearm by a felon. The trial court sentenced defendant to a suspended term of 12 to 24 months in the custody of the North Carolina Department of Adult Correction, and placed defendant on supervised probation for 18 months. On 22 September 2015, defendant's probation officer filed a violation report alleging defendant had: (1) absconded by willfully avoiding supervision or by willfully making his whereabouts unknown to his probation officer; and (2) failed to report as directed to his probation officer.

At the 19 July 2016 hearing on the violation report, the State dismissed the second alleged violation and only proceeded on the ground of absconding. At the conclusion of the hearing, the trial court concluded defendant had willfully violated the condition of his probation that he not abscond from supervision. The court entered judgment activating defendant's suspended sentence of 12 to 24 months in the custody of the North Carolina Department of Adult Correction. Defendant gave oral notice of appeal in open court.

II. Probation Revocation

Defendant's sole argument on appeal is that the trial court abused its discretion in concluding that he had absconded from supervision, because the evidence before the court was insufficient to support the court's conclusion. We agree.

A. Standard of Review

It is well established that a probation revocation hearing “only requires 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 or that the defendant has violated without lawful excuse a valid condition upon which the sentence was suspended.” *State v. Young*, 190 N.C. App. 458, 459, 660 S.E.2d 574, 576 (2008) (citation and quotation marks omitted). The trial court’s findings of probation violations, “if supported by competent evidence, will not be overturned absent a showing of manifest abuse of discretion.” *Id.* For probation violations occurring on or after 1 December 2011, a trial court may only revoke probation where the 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 violations] under N.C. Gen. Stat. § 15A-1344(d2).” *State v. Nolen*, 228 N.C. App. 203, 205, 743 S.E.2d 729, 730 (2013) (citing N.C. Gen. Stat. § 15A-1344(a) (2011)).

### B. Analysis

In support of his argument, defendant cites to this Court’s opinion in *State v. Williams*, \_\_\_ N.C. App. \_\_\_, 776 S.E.2d 741 (2015). There, the State’s evidence established that defendant Williams was placed on supervised probation on 15 January 2014 and a probation violation report was filed almost six months later, on

STATE V. BATISTE

*Opinion of the Court*

9 July 2014. *Id.* at \_\_\_, 776 S.E.2d at 742. Williams failed to report for scheduled office visits on 3 March 2014, 3 April 2014, 8 April 2014, 8 May 2014, 16 June 2014, and 1 July 2014. *Id.* at \_\_\_, 776 S.E.2d at 742-44. Williams was also not present for a scheduled home visit on 27 May 2014, had never really lived at his home address, and had been traveling back and forth between North Carolina and New Jersey. *Id.* at \_\_\_, 776 S.E.2d at 742. Additionally, Williams did not respond to a phone message left on 16 June 2014, but did call his probation officer on 23 June 2014 and left a message. *Id.* at \_\_\_, 776 S.E.2d at 742. Williams spoke with his probation officer on the phone on 24 June 2014 and again on 1 July 2014, whereupon he told his probation officer that he was in New Jersey. *Id.* at \_\_\_, 776 S.E.2d at 742. On 8 July 2014, Williams finally met with his probation officer. *Id.* at \_\_\_, 776 S.E.2d at 742. Based on this evidence, the trial court concluded Williams violated several terms and conditions of his probation and revoked the defendant's probation on the ground of, *inter alia*, absconding. *Id.* at \_\_\_, 776 S.E.2d at 742. This Court reversed the trial court's judgment, holding that although the evidence supported the trial court's conclusion that Williams failed to remain within the jurisdiction of the court and failed to report as directed to his probation officer, the evidence was insufficient to support a conclusion that Williams had absconded from supervision. *Id.* at \_\_\_, 776 S.E.2d at 746.

STATE V. BATISTE

*Opinion of the Court*

Here, the evidence before the trial court established that only 12 days had passed between the time defendant was placed on probation on 10 September 2015 and the filing of the probation violation report on 22 September 2015. Defendant's probation officer attempted to visit the only known address for defendant on 15 September 2015, and learned that defendant was not living at that address and that the residents of the home did not know defendant. However, this address was provided by defendant when he was first arrested in August 2014, and his probation officer had not been able to obtain an updated address because defendant was released from custody before he could undergo probation supervision intake procedures. Defendant's probation officer attempted to contact defendant by phone, but defendant did not return the phone call until 20 October 2015, after his probation officer had filed the violation report.

Given the exceptionally short period of time in which defendant's probation officer could not locate defendant and that defendant was released from custody without going through probation supervision intake procedures, we cannot meaningfully distinguish this case from *Williams* and hold that the evidence does not support the trial court's conclusion that defendant willfully absconded from supervision. Because the trial court did not properly find that defendant committed

STATE V. BATISTE

*Opinion of the Court*

another violation of the terms and conditions of his probation, we must reverse the court's judgment.<sup>1</sup>

REVERSED.

Judges BRYANT and STROUD concur.

Report per Rule 30(e).

---

<sup>1</sup> The judgment entered by the trial court also states that defendant violated the terms and conditions of his probation because he failed to report as directed to his probation officer. However, the State dismissed this allegation and the court did not find this ground at trial. The court's finding thus constitutes a clerical error, which does not need to be corrected because we are reversing the entire judgment.