An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA17-1096

Filed: 5 June 2018

Hoke County, Nos. 94 CRS 354, 357, 360, 367–71, 433

STATE OF NORTH CAROLINA

v.

ROBERT DWAYNE LEWIS

Appeal by defendant from judgments entered 7 February 2017 by Judge Richard T. Brown in Hoke County Superior Court. Heard in the Court of Appeals 18 April 2018.

*Attorney General Joshua H. Stein, by Assistant Attorney General Joseph L. Hyde, for the State.*

*Appellate Defender Glenn Gerding, by Assistant Appellate Defender Kathryn L. VandenBerg, for defendant.*

DIETZ, Judge.

Defendant Robert Dwayne Lewis appeals the revocation of his probation for committing additional criminal offenses. This Court recently vacated the underlying convictions on which the trial court based its revocation. *State v. Lewis*, No. COA17-

888, __ N.C. App. __, __ S.E.2d __ (May 1, 2018). Accordingly, we vacate the trial court's judgments and remand for further proceedings.

**Facts and Procedural History**

On 2 May 1994, Defendant Robert Dwayne Lewis pleaded guilty to eight counts of common law robbery and one count of attempted common law robbery in Hoke County. The court sentenced Lewis to four consecutive terms of 10 years in prison but suspended the sentences with five years of supervised probation to begin upon Lewis's release from prison after completing a separate sentence from another robbery case in Moore County.

Lewis was released from prison sometime in May 2012. In October 2014, Lewis was arrested and charged with armed robbery and kidnapping in connection with a string of robberies in Hoke and Johnston Counties. Lewis pleaded guilty to those charges while reserving his right to appeal the denial of a motion to suppress.

On 19 November 2014, Lewis's probation officer filed violation reports alleging that Lewis had violated the conditions of his probation from the 1994 case by failing to pay restitution and by committing additional criminal offenses. At the probation revocation hearing, the trial court revoked Lewis's probation, explaining that "based upon the alleged violation for commission of new offenses, and that finding is based on the evidence presented this date, and the plea accepted this date, of guilty to the criminal offenses in Hoke County in the – in the identified files. Based upon that

violation, the Court does revoke his probation and activates the underlying sentences."

Lewis timely appealed. While the appeal was pending, this Court vacated the underlying convictions on which the trial court based its probation revocation and remanded those criminal cases for further proceedings. *State v. Lewis*, No. COA17-888, __ N.C. App. __, __ S.E.2d __ (May 1, 2018).

**Analysis**

Lewis argues that the trial court lacked jurisdiction to revoke his probation because the State failed to prove that the violation reports were filed during the term of probation. Specifically, Lewis contends that the State's assertion that his five-year term of probation began when he was released from prison "roundabouts May of 2012" was insufficient to establish that the November 2014 violation reports were filed within the probation term.

We need not reach this issue because Lewis's probation revocation must be set aside on other grounds. The trial court expressly based its revocation solely on the finding that Lewis willfully violated his probation by committing additional offenses on "the plea accepted this date, of guilty to the criminal offenses in Hoke County in the – in the identified files." The State also alleged that Lewis failed to pay court-ordered restitution, but at the revocation hearing the prosecutor stated that "Your Honor, as far as the monetary arrearages, I'm not going to present any evidence on

that." As a result, the trial court explained that it revoked Lewis's probation solely based on his guilty pleas to additional criminal offenses. *See In re J.C.*, 236 N.C. App. 558, 562, 783 S.E.2d 202, 205 (2014). Because this Court vacated the underlying convictions on which the trial court relied, we likewise vacate the court's probation revocation judgments and remand for further proceedings.

**Conclusion**

For the reasons discussed above, we vacate the trial court's probation revocation judgments and remand for further proceedings.

VACATED AND REMANDED.

Judges DILLON and ARROWOOD concur.

Report per Rule 30(e).