An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA18-1193

Filed: 3 December 2019

Forsyth County, No. 17 CRS 490

STATE OF NORTH CAROLINA

v.

MICHAEL DOYLE BENFIELD

Appeal by Defendant from judgment entered 21 May 2018 by Judge L. Todd Burke in Forsyth County Superior Court. Heard in the Court of Appeals 18 November 2019.

Attorney General Joshua H. Stein, by Assistant Attorney General Kimberly S. Murrell, for the State.

Sean P. Vitrano for Defendant-Appellant.

DILLON, Judge.

Defendant Michael Doyle Benfield appeals from a judgment revoking his probation. Because Defendant's notice of appeal from this judgment was untimely, we dismiss the appeal.

I. Background

On 2 September 2016, Defendant pleaded guilty to felony breaking and entering and safecracking. The trial court entered a suspended sentence of 8 to 19 months and placed Defendant on supervised probation for 24 months.

Seventeen months later, in March 2018, Defendant's probation officer filed a violation report alleging Defendant had violated numerous terms of his probation. Two months later, in May 2018, Defendant admitted the violations in open court. The same day, the trial court entered a judgment which concluded Defendant was in willful violation of the terms of his probation, revoked the probation, and activated Defendant's suspended sentence.

The next month, in June 2018, Defendant filed written notice of appeal.

II. Analysis

Although not discussed by the parties, we must address the validity of Defendant's notice of appeal, as that notice provides the basis for our appellate jurisdiction. *See State v. Webber*, 190 N.C. App. 649, 650, 660 S.E.2d 621, 622 (2008) ("It is well-established that the issue of a court's jurisdiction over a matter may be raised at any time, even . . . by a court *sua sponte*.").

In criminal cases, the Appellate Rules require "giving oral notice of appeal at trial" or "filing notice of appeal with the clerk of superior court and serving copies thereof upon all adverse parties within fourteen days after entry of the judgment." N.C.R. App. P. 4(a)(1)-(2).

In this case, the judgment revoking Defendant's probation was entered on 21 May 2018. Defendant did not give oral notice of appeal. Although Defendant's written notice of appeal and certificate of service are dated 1 June 2018, the document is file stamped on 15 June 2018, which is twenty-five days after the judgment was entered. And our Court has established that "[f]or purposes of determining when a document is considered 'filed,' the file stamp date is controlling." *State v. Peele*, 246 N.C. App. 159, 165, 783 S.E.2d 28, 33 (2016). Defendant's notice of appeal was therefore untimely.

Further, Defendant's notice of appeal fails to "designate the judgment or order from which appeal is taken," as required by N.C.R. App. P. 4(b). Due to Defendant's violations of Rule 4, we have no jurisdiction over his appeal and must dismiss it. *See State v. McCoy*, 171 N.C. App. 636, 638, 615 S.E.2d 319, 321 ("[W]hen a defendant has not properly given notice of appeal, this Court is without jurisdiction to hear the appeal."), *appeal dismissed*, 360 N.C. 73, 622 S.E.2d 626 (2005).

DISMISSED.

Judges DIETZ and MURPHY concur.

Report per Rule 30(e).