

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA23-687

Filed 19 March 2024

Union County, No. 18CRS50322

STATE OF NORTH CAROLINA

v.

SCOTT GRAINGER JONES, Defendant.

Appeal by defendant from judgment and order entered 15 November 2022 by Judge Nathan Hunt Gwyn III in Union County Superior Court. Heard in the Court of Appeals 20 February 2024.

*Attorney General Joshua H. Stein, by Assistant Attorney General Jeanne Hill Washburn, for the State-appellee.*

*Reece & Reece, by Mary McCullers Reece, for defendant-appellant.*

PER CURIAM.

Defendant appeals the revocation of his probation. We affirm as modified.

On 25 March 2020, defendant was convicted of driving while impaired (“DWI”), and the trial court sentenced him to 24 months of confinement suspended for 24 months of supervised probation. The terms of probation provided, among other things, that defendant was to pay certain costs and fines, obtain a substance abuse

assessment, and not commit any new crimes while on probation. In January 2022, defendant's period of probation was extended for a period of 1 year until 10 March 2023 for failure to pay costs and fines.

While still on probation for the underlying conviction, defendant was charged with and convicted of another DWI charge. Thereafter, on 29 August 2022, defendant's probation officer filed a violation report alleging that defendant willfully violated two conditions of probation: (i) failure to report for a substance abuse assessment and (ii) being charged with and convicted of habitual DWI. Defendant denied the violations.

On 15 November 2022, the trial court called this probation revocation matter for a hearing. After hearing all the evidence, the trial court rendered judgment, finding that defendant "is in fact in violation as described in the violation report." The trial court revoked probation, and defendant entered oral notice of appeal in open court. This Court has jurisdiction to review the trial court's judgment pursuant to N.C.G.S. §§ 7A-27(b) and 15A-1444(a).

This Court reviews the trial court's decision to revoke probation for abuse of discretion. *State v. Murchison*, 367 N.C. 461, 464 (2014). "[A]n abuse occurs when a ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision." *State v. Maness*, 363 N.C. 261, 279 (2009) (quotation marks and citation omitted).

On the Impaired Driving Judgment and Commitment Upon Revocation of

Probation form, the trial court checked box 4 for the finding that, “[e]ach violation is, in and of itself, a sufficient basis upon which this Court should revoke probation and activate the suspended sentence.” Defendant argues the alleged violation number 1, the failure to undergo a substance abuse assessment, was not a revocable offense. *See generally* N.C.G.S. § 15A-1344(a) (2023). Thus, defendant argues the trial court acted under a misapprehension of the law, and therefore abused its discretion, when it revoked his probation based on two alleged violations because, “if the trial court had recognized that only one of the potential violations could result in revocation, it might not have revoked probation, but, instead, might have chosen a different response short of revocation.” We disagree.

Here, as stated in our recent decision, *State v. Daniels*, “we are able to ascertain that the trial court properly weighed the probation violations, as it acknowledged by checking the box for finding 5(a) that the revocation of [d]efendant’s probation was based upon the commission of a new criminal offense.” 893 S.E.2d 212, 215 (N.C. Ct. App. 2023). Although we agree with defendant that the trial court improperly checked the box for finding of fact 4, a finding that “[e]ach violation, in and of itself, a sufficient basis” for revocation of probation, “it is clear from the trial court’s indication in the same judgment that it properly considered and understood the statutory basis for revoking [d]efendant’s probation and properly exercised its discretion. We affirm the trial court’s judgment revoking [d]efendant’s probation; however, we reverse the trial court’s finding 4.” *Id.*

STATE V. JONES

*Opinion of the Court*

AFFIRMED AS MODIFIED.

Panel consisting of:

Judges ZACHARY, GORE, and GRIFFIN.

Report per Rule 30(e).