

**Filed 6/7/12 by Clerk of Supreme Court
IN THE SUPREME COURT
STATE OF NORTH DAKOTA**

2012 ND 107

State of North Dakota,

Plaintiff and Appellee

v.

John Ross Unruh,

Defendant and Appellant

No. 20110301

Appeal from the District Court of Burleigh County, South Central Judicial District, the Honorable David E. Reich, Judge.

AFFIRMED.

Per Curiam.

Jacob T. Rodenbiker, Assistant State's Attorney, Courthouse, 514 E. Thayer Ave., Bismarck, ND 58501, for plaintiff and appellee. Submitted on brief.

Steven Balaban, 200 N. Mandan St., Bismarck, ND 58501, for defendant and appellant. Submitted on brief.

State v. Unruh
No. 20110301

Per Curiam.

[¶1] John Ross Unruh appealed from a district court order revoking his probation and an amended criminal judgment sentencing him to one year of imprisonment with all but 120 days suspended for two years and two years of supervised probation. Unruh argues the district court improperly sentenced him because his original sentence included suspended time and N.D.C.C. § 12.1-32-07(6) limits resentencing upon revocation to the original sentence in the case of suspended execution of a sentence. We summarily affirm under N.D.R.App.P. 35.1(a)(7); see State v. Lindgren, 483 N.W.2d 777, 778-79 (N.D. 1992) (holding the district court had the authority to resentence a defendant who violated a condition of probation to any sentence that was initially available, and the predecessor to N.D.C.C. § 12.1-32-07(6) did not limit resentencing to the original sentence in the case of suspended execution of the sentence).

[¶2] Gerald W. VandeWalle, C.J.
Dale V. Sandstrom
Daniel J. Crothers
Mary Muehlen Maring
Carol Ronning Kapsner