

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

2012 ND 126

State of North Dakota,

Plaintiff and Appellee

v.

Mark Christian Palmer,

Defendant and Appellant

Nos. 20120077 & 20120078

Appeal from the District Court of McHenry County, Northeast Judicial District, the Honorable John C. McClintock, Judge.

AFFIRMED.

Per Curiam.

Marie A. Roller, State's Attorney, 407 S. Main Street, Room 307, Towner, ND 58788, for plaintiff and appellee; submitted on brief.

Russell J. Myhre, P.O. Box 475, Valley City, ND 58072, for defendant and appellant; submitted on brief.

State v. Palmer
Nos. 20120077 & 20120078

Per Curiam.

[¶1] Mark Christian Palmer appealed from a district court order denying his motion to dismiss a probation revocation petition and revoking his probation. On appeal, Palmer argues the district court abused its discretion in denying his motion and revoking his probation because he was still incarcerated when the petition for revocation was filed and therefore his probation had not yet commenced. We affirm under N.D.R.App.P. 35.1(a)(4) and (7). See State v. Bender, 1998 ND 72, ¶ 15, 576 N.W.2d 210 (holding N.D.C.C. § 12.1-32-07(6) allows revocation at any time prior to the expiration of probation and does not prohibit revocation if the defendant violates a condition of probation while still incarcerated).

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