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NO. COA11-907
NORTH CAROLINA COURT OF APPEALS

Filed: 7 February 2012

STATE OF NORTH CAROLINA

v.

Lenoir County
Nos. 09 CRS 52095; 11 CRS 204

ISRAEL JOHN ROGERS

Appeal by defendant from judgments entered 9 March 2011 by Judge Paul L. Jones in Lenoir County Superior Court. Heard in the Court of Appeals 23 January 2012.

Attorney General Roy Cooper, by Assistant Attorney General Rufus C. Allen, for the State.

Daniel F. Read for defendant-appellant.

ERVIN, Judge.

Defendant Israel John Rogers appeals from judgments revoking his probation and activating his suspended sentences. On appeal, Defendant contends that the trial court erred by finding that he had willfully violated the terms and conditions of his probation by committing other criminal offenses and had failed to make required monetary payments and by failing to make factual findings that had adequate evidentiary support. After careful consideration of Defendant's challenges to the trial

court's orders in light of the record and the applicable law, we conclude that the trial court's orders should be affirmed.

I. Factual Background

On 12 January 2010, Defendant pled guilty to three counts each of breaking or entering a motor vehicle and misdemeanor possession of stolen goods in Onslow County File Nos. 09 CRS 50141, 50145-56, and 50149. Based upon these convictions, the court sentenced Defendant to three consecutive terms of 8 to 10 months imprisonment, suspended those sentences, and placed Defendant on supervised probation for 36 months. On 27 April 2010, Defendant pled guilty to misdemeanor possession of stolen property in Lenoir County File No. 09 CRS 52095. Based on this plea, the court sentenced Defendant to 45 days imprisonment, suspended this sentence, and placed Defendant on probation for 36 months. In both cases, the court ordered Defendant to pay court costs and restitution and to "[c]ommit no criminal offense in any jurisdiction." Onslow County File No. 09 CRS 50149 was subsequently assigned Lenoir County File No. 11 CRS 204.

On 28 July 2010, Defendant's probation officer filed a report alleging that Defendant had violated the terms and conditions of his probation in File No. 09 CRS 52095 by failing to make required monetary payments. On 22 September 2010, the trial court modified Defendant's original probationary judgment

by assigning Defendant to the Intensive Supervision Program for a period of three months.

On 2 February 2011, Defendant's probation officer filed violation reports in File Nos. 09 CRS 52095 and 11 CRS 204. In each report, Defendant's probation officer alleged that (1) Defendant had not made any payments against his court-ordered monetary obligations; (2) Defendant had been convicted of driving while license revoked in Pitt County on 18 November 2010 and a registration violation in Lenoir County on 2 August 2010; and (3) Defendant had been convicted of felonious larceny in Pitt County on 4 November 2010.

At a hearing held before the trial court on 9 March 2011, Defendant admitted that he had violated the terms and conditions of his probation as alleged in the violation reports. Defendant's probation officer informed the trial court that Defendant was currently serving an active sentence and had pending charges in other counties. Defendant told the trial court that, at the earlier probation violation hearing, "you had reinstated my probation, but you had also told me to take care of my pending charges." According to Defendant, "[b]asically, that's what I've been doing, taking care of my pending charges." Finally, Defendant also told the trial court that he "only had about 3 or 4 different jobs [he] could [] work with" since he

did not have a social security number or a birth certificate and that his inability to make required monetary payments stemmed from his difficulty in obtaining and maintaining employment. By means of a written judgment entered on 9 March 2011, the trial court revoked Defendant's probation and activated his suspended sentences based upon a finding that Defendant had willfully committed all three of the violations listed in the applicable violation reports. Defendant noted an appeal to this Court from the trial court's judgments.

II. Legal Analysis

A. Commission of Additional Criminal Offenses

In his first challenge to the trial court's judgments, Defendant contends that the trial court erred by concluding he had willfully violated the terms and conditions of his probation by committing additional criminal offenses. We disagree.

In order to justify the revocation of a defendant's probation, the evidence need only "reasonably satisfy the [trial court] in the exercise of [its] sound discretion that the defendant has willfully violated a valid condition of probation or that the defendant has violated without lawful excuse a valid condition upon which the sentence was suspended." *State v. Hewett*, 270 N.C. 348, 353, 154 S.E.2d 476, 480 (1967). A verified probation violation report constitutes competent

evidence tending to show that a probation violation has occurred. *State v. Duncan*, 270 N.C. 241, 246, 154 S.E.2d 53, 58 (1967). A defendant has the burden of eliciting evidence demonstrating an inability to comply with the terms and conditions of his or her probation. *State v. Tozzi*, 84 N.C. App. 517, 521, 353 S.E.2d 250, 253 (1987). In the absence of such evidence, proof of a failure to comply is sufficient to support a finding that a defendant's violation was willful or without lawful excuse. *State v. Crouch*, 74 N.C. App. 565, 567, 328 S.E.2d 833, 835 (1985). Put another way, "evidence of [a] defendant's failure to comply may justify a finding that [a] defendant's failure to comply was [willful] or without lawful excuse." *Tozzi*, 84 N.C. App. at 521, 353 S.E.2d at 253. A trial court's decision to revoke a defendant's probation will only be disturbed on appeal in the event that the defendant demonstrates the existence of a manifest abuse of discretion. *State v. Guffey*, 253 N.C. 43, 45, 116 S.E.2d 148, 150 (1960).

According to Paragraph No. 3 of the verified violation reports, Defendant willfully violated the condition of his probation requiring that he "[c]ommit no criminal offense in any jurisdiction" in that "[o]n 5/10/10 the defendant committed the crime of felony larceny and was convicted in Pitt County Superior Court on 11/4/2010." At the revocation hearing,

Defendant admitted all of the violations alleged in the violation reports. In addition, Defendant did not offer any evidence tending to show either that his violation was not willful or that he had a lawful excuse for violating the requirement that he "[c]ommit no criminal offense." Instead, Defendant asserts that "some of the crimes occurred and were adjudicated prior to the September 22, 2010 order continuing him on probation" and argues that "it is unfair to cite him back to court again . . . for known or readily discoverable conduct which occurred before the first violation hearing."

The fundamental problem with Defendant's argument is the fact that, as he has readily admitted, not all of the offenses specified in the violation reports were committed and adjudicated prior to the earlier violation hearing. More particularly, Defendant had not yet been convicted of the Pitt County larceny offense at the time of the earlier hearing. Instead, the Pitt County larceny charge was pending at the time of the earlier hearing, so that any effort to revoke Defendant's probation based on the commission of that offense at the time of the earlier hearing would have been premature. *See Guffey*, 253 N.C. at 45, 116 S.E.2d at 150 (holding that, "when a criminal charge is pending in a court of competent jurisdiction, which charge is the sole basis for activating a previously suspended

sentence, such sentence should not be activated unless there is a conviction on the pending charge or there is a plea of guilty entered thereto"). As a result of the fact that Defendant's argument, even if otherwise valid, has no application to the violation stemming from his Pitt County larceny conviction, we conclude that Defendant's initial challenge to the revocation of his probation and the activation of his suspended sentences lacks merit.

B. Failure to Make Required Payments

Secondly, Defendant contends that the trial court erred by concluding that he willfully violated the terms and conditions of his probation by failing to make required monetary payments. However, we need not address this aspect of Defendant's challenge to the trial court's judgments because Defendant's probation was properly subject to revocation based upon his Pitt County larceny conviction. See *State v. Braswell*, 283 N.C. 332, 337, 196 S.E.2d 185, 188 (1973) (stating that "[t]he breach of any single valid condition upon which the sentence was suspended will support an order activating the sentence"). As a result, Defendant is not entitled to any relief from the trial court's judgments based upon this argument.

C. Trial Court's Findings of Fact

Finally, Defendant contends that the trial court erred by revoking his probation and activating his suspended sentences on the grounds that the trial court's findings of fact lacked adequate evidentiary support. Defendant has not, however, challenged any specific factual finding as lacking in adequate evidentiary support or as otherwise being erroneous. After carefully reviewing the record, we conclude that the trial court's finding that Defendant willfully and without lawful excuse violated the terms and conditions of his probation by being convicted of larceny in Pitt County has adequate record support. In addition, we hold that it was within the trial court's sound discretion to revoke Defendant's probation and activate his suspended sentences based upon this violation. As a result, we conclude that Defendant's final challenge to the trial court's judgments lacks merit.

III. Conclusion

Thus, for the reasons set forth above, we conclude that Defendant is not entitled to any relief from the trial court's decision to revoke his probation and activate his suspended sentences. As a result, the trial court's judgments should be, and hereby are, affirmed.

AFFIRMED.

Judges ROBERT C. HUNTER and STEPHENS concur.

Report per Rule 30(e).