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NO. COA05-228

NORTH CAROLINA COURT OF APPEALS

Filed: 20 December 2005

STATE OF NORTH CAROLINA

v.

Chatham County
No. 03 CRS 2233

EDWARD W. BURNETTE,
Defendant.

Appeal by defendant from judgment entered 25 October 2004 by Judge Steve Balog in Chatham County Superior Court. Heard in the Court of Appeals on 28 November 2005.

Attorney General Roy A. Cooper, III, by Assistant Attorney General Barry Bloch, for the State.

Robert T. Newman, Sr., for defendant-appellant.

JACKSON, Judge.

On 23 January 2001, a jury found defendant Edward W. Burnette guilty of felony possession of cocaine. The trial court sentenced defendant to four to five months imprisonment, suspended the sentence and placed defendant on thirty months supervised probation. On 29 May 2003, defendant's probation officer filed a probation violation report alleging that defendant had failed to: (1) report to his probation officer on two dates; (2) pay his monetary obligation; (3) notify his probation officer of his change in employment; (4) left his residence and refused to make his

whereabouts known; (5) provide proof that he obtained a substance abuse assessment. A warrant for defendant's arrest was issued the same day, and defendant was served with the warrant on 3 July 2004 while he was in the custody of the Yadkin County detention facility.

Judge Steve Balog held a probation violation hearing on 25 October 2004. At the hearing, defendant admitted violations (1), (2) and (4) and the assistant prosecutor withdrew violations (3) and (5). Defendant's probation officer, Lisa M. Robinson, testified that the allegations in paragraphs (1), (2) and (4) were true; that defendant had not paid any money since July of 2004; that defendant had absconded within a month of her taking the case; and that she had not seen defendant after 29 May 2003 until his arrest in Yadkin County in July of 2004. Defendant testified that he had problems with paying his obligation because he has "two child-support fees to pay per month." He further testified that "using bad judgment, that's what kept me from seeing Ms. Robinson at that time[.]"

At the conclusion of the hearing, the trial court concluded that defendant willfully and without lawful excuse violated the conditions of his probation in paragraphs (1), (2) and (4) . In a judgment and commitment entered 25 October 2004, however, the trial court found that "by the evidence presented" defendant violated the conditions of his probation set out in paragraphs (1) and (2) of the probation violation report. The trial court further found that each violation is a sufficient basis upon which the court should

revoke probation. The trial court revoked defendant's probation and activated defendant's sentence. Defendant appeals.

The dispositive issue is whether defendant willfully violated a condition of his probation without lawful excuse.

It is well settled that "'probation or suspension of sentence comes as an act of grace to one convicted of, or pleading guilty to, a crime.'" *State v. Tennant*, 141 N.C. App. 524, 526, 540 S.E.2d 807, 808 (2000) (quoting *State v. Duncan*, 270 N.C. 241, 245, 154 S.E.2d 53, 57 (1967)). "All that is required in a hearing [to revoke probation] is that the evidence be such as to reasonably satisfy the judge in the exercise of his 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 is competent evidence sufficient to support revocation of probation. *State v. Gamble*, 50 N.C. App. 658, 661, 274 S.E.2d 874, 876 (1981) (citing *State v. Duncan*, 270 N.C. 241, 154 S.E.2d 53 (1967)). Once the State meets its burden, the burden then shifts to defendant to "present competent evidence of his inability to comply with the conditions of probation; and that otherwise, evidence of defendant's failure to comply may justify a finding that defendant's failure to comply was willful or without lawful excuse." *State v. Tozzi*, 84 N.C. App. 517, 521, 353 S.E.2d 250, 253 (1987) (citing *State v. Crouch*, 74 N.C. App. 565, 567, 328 S.E.2d 833, 835 (1985)). "Any violation of a valid

condition of probation is sufficient to revoke [a] defendant's probation." *Id.* (citing *State v. Freeman*, 47 N.C. App. 171, 176, 266 S.E.2d 723, 723 (1980)).

We conclude the State presented sufficient evidence to show that defendant willfully violated the conditions of his probation without lawful excuse. Here, defendant admitted to violations (1), (2) and (4). Although defendant informed the trial court that he did not comply with the monetary conditions of his probation because of his child support obligations, defendant offered no excuse for violating the condition requiring that he report to his probation officer. In fact, defendant testified that he missed his visits due to "bad judgment." Defendant's admission, without offering any evidence to justify not meeting with his probation officer, was sufficient within itself to sustain the trial court's finding that his failure to comply was without lawful excuse. See *State v. Alston*, 139 N.C. App. 787, 794-95, 534 S.E.2d 666, 671 (2000). We conclude that there is evidence in the record to support the judge's findings that defendant willfully and without lawful excuse violated the conditions of his probation by failing to meet with his probation officer.

Defendant next contends the trial court failed to make the required findings of fact to support revocation pursuant to North Carolina General Statutes, section 15A-1345.

Here, the revocation judgment incorporated the violation report by reference. The trial court further found that the defendant had committed two different violations of the terms and

conditions of his probation; that the terms and conditions violated were valid, that defendant violated each condition willfully and without valid excuse; and each violation occurred prior to the expiration or termination of defendant's probation. These ultimate findings of fact are quite sufficient to support the trial court's judgments of revocation. Contrary to defendant's assertion, the trial court was not required to make evidentiary findings of fact on all of the contentions raised by defendant in his explanations to the court. See *State v. Williamson*, 61 N.C. App. 531, 301 S.E.2d 423 (1983).

Defendant further argues that the trial court erred in revoking his probation because there is no evidence in the record that the State complied with North Carolina General Statutes, section 15A-1344.

When the trial court suspends a sentence and places a defendant on probation on certain named conditions, the court may, after notice and hearing, modify or revoke probation at any time prior to the expiration or termination of the probation period. N.C. Gen. Stat. § 15A-1344(d); See also *State v. Camp*, 299 N.C. 524, 263 S.E.2d 592 (1980). After the probation period has expired, however, the trial court may revoke probation pursuant to North Carolina General Statutes, section 15A-1344(f) which provides:

Revocation after Period of Probation -- The court may revoke probation after the expiration of the period of probation if:
(1) Before the expiration of the period of probation the State has filed a written motion with the clerk indicating its intent to

conduct a revocation hearing; and
(2) The court finds that the State has made reasonable effort to notify the probationer and to conduct the hearing earlier.

Here, defendant's probation officer signed and dated the violation report on 29 May 2003, two months before defendant's probation was to expire. Furthermore, a warrant for defendant's arrest was issued the next day. Because defendant absconded, defendant was not served with the arrest warrant for his violations until July 2004. Defendant signed the probation violation report on 3 July 2004 and the trial court subsequently conducted a probation hearing in October 2004. This evidence indicates that the State filed a written motion with the clerk of its intent to conduct a revocation hearing and, therefore, the State met its burden of perfecting the trial court's jurisdiction for a probation revocation hearing after defendant's period of probation had expired and that defendant was put on notice that a hearing would be conducted. See N.C. Gen. Stat. § 15A-1344(f).

Affirmed.

Judges WYNN and CALABRIA concur.

Report per Rule 30(e).