NO. COA01-556

NORTH CAROLINA COURT OF APPEALS

Filed: 2 July 2002

STATE OF NORTH CAROLINA

v. Alexander County
No. 00 CRS 4161
00 CRS 4162

CHRISTOPHER WRIGHT STEPHENS,
Defendant.

Appeal by defendant from judgment entered 12 January 2001 by Judge Sanford L. Steelman, Jr. in Alexander County Superior Court. Heard in the Court of Appeals 14 March 2002.

Attorney General Roy Cooper, by Assistant Attorney General Richard H. Bradford, for the State.

Edward L. Hedrick, IV, for defendant-appellant.

HUDSON, Judge.

Defendant appeals the revocation of his probation and the resulting activation of his sentences. We hold that the trial court properly revoked defendant's probation and activated his sentences.

Defendant was convicted on 7 August 2000 of two counts of felony larceny of a motor vehicle and sentenced to two consecutive terms of not less than six months and not more than eight months. The trial court suspended these sentences and placed defendant on supervised probation for thirty-six months subject to a number of

special conditions including, but not limited to: (1) remaining at Belle View Adult Care Home ("Belle View"), (2) complying with all rules and regulations of Belle View, (3) obtaining a substance abuse assessment within thirty days of conviction, and (4) paying a monthly fee to the court. On 5 October 2000, defendant's probation officer filed a violation report alleging that defendant had violated the terms of his probation by (1) failing to report to the probations officer's office on a certain day, (2) failing to obtain a substance abuse assessment, and (3) failing to comply with the rules of Belle View. At a violation hearing on 13 November 2000, the trial court placed defendant on intensive probation with some additional terms, including that "funds are to be with held [sic] from the defendant's account until he can financially pay for his assessment and treatment programs ordered by the court." On 12 December 2000, defendant's probation officer filed a second violation report alleging that defendant did not satisfy the monetary conditions of his probation, that he was not able to remain at Belle View because he failed to abide by the rules and regulations of Belle View, and that he failed to obtain a substance abuse assessment within the allotted time period. The trial court found that defendant violated terms of his probation, and thereupon revoked his probation and activated his sentences. Defendant appeals.

On appeal, defendant raises one assignment of error: that "the trial court committed reversible error in revoking the defendant's probation, and activating the defendant's sentences on the grounds

that there was insufficient evidence to support or justify the court's ruling." First, we note that "[p]robation is an act of grace by the State to one convicted of a crime. It is a matter of discretion with the trial court." *State v. Freeman*, 47 N.C. App. 171, 175, 266 S.E.2d 723, 725, *disc. rev. denied*, 301 N.C. 99, 273 S.E.2d 304 (1980). Because probation is an "act of grace," not a right owed to all people convicted of crimes, a probation violation hearing requires less formality than an actual criminal trial. *See State v. Duncan*, 270 N.C. 241, 246, 154 S.E.2d 53, 57-58 (1967) (holding that the trial court properly revoked defendant's probation). And, because a probation revocation hearing is not a formal criminal trial, the law does not require that the parties follow precisely the rules of evidence. *See id* at 245, 154 S.E.2d at 57.

> The alleged violation by the defendant of a valid condition upon which a sentence in a criminal case was suspended need not be proven beyond a reasonable doubt.
>
> All that is required is that the evidence be such as to reasonably satisfy the judge in the exercise of his sound discretion that the defendant has violated a valid condition upon which the sentence was suspended.

State v. Robinson, 248 N.C. 282, 285-86, 103 S.E.2d 376, 379 (1958) (citations omitted). "Judicial discretion implies conscientious judgment, not arbitrary or willful action. It takes account of the law and the particular circumstances of the case, and is directed by the reason and conscience of the judge to a just result." *Duncan*, 270 N.C. at 245, 154 S.E.2d at 57 (citing *Langnes v. Green*, 282 U.S. 531, 541, 75 L. Ed. 520, 526 (1931)).

In probation revocation hearings, the burden of producing evidence that the defendant violated the terms of his probation lies with the State. *See State v. Tozzi*, 84 N.C. App. 517, 521, 353 S.E.2d 250, 253 (1987) (holding that defendant's probation was validly revoked based on willful violations of the terms of his probation). Once satisfied, the burden shifts to the defendant to prove that he had a valid excuse or was unable to comply with the terms of the probation. *See id.* The State must prove that defendant either wilfully or without lawful excuse violated a valid condition of probation. *See Robinson*, 248 N.C. at 287, 103 S.E.2d at 380. Initially, this Court required in *State v. Foust*, 13 N.C. App. 382, 185 S.E.2d 718 (1972), that the trial court make an extensive inquiry into defendant's ability to comply with the terms of his probation. This Court, in *State v. Young*, clarified *Foust*, explaining that even though the trial court is not required to make extensive findings of fact, a "defendant is entitled to have his evidence considered and evaluated." *Young*, 21 N.C. App. 316, 321, 204 S.E.2d 185, 188 (1974) (ordering a new hearing in which the court would consider the defendant's evidence and indicate this consideration in the findings of fact). Consequently, the trial court is required to show in its findings of fact that it has considered defendant's evidence. *See State v. Smith*, 43 N.C. App. 727, 732, 259 S.E.2d 805, 808 (1979). Though they need not be extensive, the findings of fact must support the court's finding that defendant willfully and without lawful excuse violated his probation. *See State v. Lucas*, 58 N.C. App. 141, 145, 292 S.E.2d

747, 750, *disc. rev. denied*, 306 N.C. 390, 293 S.E.2d 593 (1982).

In his appeal, defendant notes that he is mentally retarded, with a Wechsler Adult IQ of 66, a Slosson Intelligence Test score of 54, an associated mental age of eight years and eight months, and an adaptive behavior age of four years and four months. He suffers from a number of mental and emotional illnesses and he has been prescribed multiple medications for these illnesses. Due to his mental and emotional limitations, defendant argues that he is not capable of performing certain functions and, therefore, that he did not willfully violate the terms of his probation. For example, defendant contends that the director of Belle View, Rick Connor, was the payee of defendant's Social Security disability income, and that because defendant has severe mental limitations, Mr. Connor was expected to pay defendant's court-ordered fees from this disability income. Additionally, defendant testified that he expected that Mr. Connor would assist him in obtaining a substance abuse assessment, but he did not. When asked if he knew what a substance abuse assessment was, he responded that he did not, other than that it was a "drug thing", and that he did not know how to obtain one.

Although it appears from the transcript and record that defendant was not able to meet two requirements of his probation (obtaining a substance abuse assessment and paying court ordered costs), the evidence indicates that defendant willfully violated the other requirements of his probation. Defendant argues that the evidence introduced by the State (a letter written by an employee

at Belle View) neglects to state that defendant may not return to Belle View or to specify which rules defendant violated at Belle View. Defendant also argues that his mental limitations excuse his behavior at Belle View and that this same behavior demonstrates defendant's need for a special care home.

Again, we note the relaxed nature of evidentiary rules and requirements at probation violation hearings. *See State v. White*, 129 N.C. App. 52, 58, 496 S.E.2d 842, 846 (1998), *aff'd in part by* 350 N.C. 302, 512 S.E.2d 424 (1999). It does appear from the record that defendant was involved in an incident at Belle View, as a result of which he left the facility. The trial court specifically noted at the probation violation hearing that defendant had been reported to the court earlier for not following the rules of Belle View, and that for a second time he had not complied with those rules. As a result, the trial court determined that returning defendant to Belle View was not an option, and neither side presented "a viable alternative" to incarceration for the remainder of defendant's sentence. In the pre-printed "Judgment and Commitment Upon Revocation of Probation" form (AOC-CR-607), the trial court found that

> [e]ach of the conditions violated as set forth above is valid; the defendant violated each condition willfully and without valid excuse; and each violation occurred at a time prior to the expiration or termination of the period of the defendant's probation. Each violation is, in and of itself, a sufficient basis upon which this Court should revoke probation and activate the suspended sentence.

Because we find that the trial court did not abuse its discretion

in finding that defendant violated the terms of his probation requiring him to continue residing at Belle View and to follow its rules, we hold that the trial court's judgment revoking defendant's probation and activating his sentences will not be disturbed on appeal. *See State v. Guffey*, 253 N.C. 43, 45, 116 S.E.2d 148, 150 (1960).

Affirmed.

Judges MARTIN and THOMAS concur.

Report per Rule 30(e).