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NO. COA11-513
NORTH CAROLINA COURT OF APPEALS

Filed: 15 November 2011

STATE OF NORTH CAROLINA

v.

Cabarrus County
No. 09 CRS 9699

MELISSA DAWN SOLOMON

Appeal by defendant from judgment entered 7 January 2011 by Judge W. Erwin Spainhour in Cabarrus County Superior Court.

Heard in the Court of Appeals 17 October 2011.

Attorney General Roy Cooper, by Assistant Attorney General Eryn E. Linkous, for the State.

Jon W. Myers for defendant appellant.

McCULLOUGH, Judge.

Defendant appeals from revocation of probation and activation of a sentence of six to eight months imposed upon a conviction of embezzlement. The court entered the original sentence on 9 March 2009 and placed defendant on probation for 30 months.

On 21 June 2010, defendant's probation officer filed a violation report alleging that defendant violated probation by

(1) testing positive for methamphetamines, cocaine, and opiates on 17 May 2010; (2) by failing to report for a scheduled appointment with her probation officer on 12 May 2010; (3) by failing to make one or more payments toward her court indebtedness; (4) by failing to make one or more payments for her probation supervision fee; and (5) by failing to attend her treatment program, with the exception of one session on 5 May 2010, since 16 March 2010. At the conclusion of a hearing on 7 January 2011, the court found that defendant willfully and without lawful excuse committed all of the violations. The court found that each violation, in and of itself, was a sufficient basis for revoking probation. The court activated the sentence.

Defendant contends the evidence does not support the court's findings that she willfully and without lawful excuse failed to pay the two monetary conditions, failed to attend treatment sessions, and failed to keep an appointment with the probation officer. We disagree.

"All that is required in a hearing [upon a violation report] 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). Evidence which shows the defendant failed to comply with a term or condition of probation is sufficient to support a finding that the violation was willful or without lawful excuse unless the defendant can present evidence to persuade the court that the violation was not committed willfully or without lawful excuse. *State v. Crouch*, 74 N.C. App. 565, 567, 328 S.E.2d 833, 835 (1985). A sworn violation report is sufficient evidence to support a finding of a violation of a condition of probation. *State v. Dement*, 42 N.C. App. 254, 255, 255 S.E.2d 793, 794 (1979).

Defendant's own testimony established that she chose to pay for softball, Brownies, Cub Scouts and dance lessons for her children instead of paying her court-ordered probation obligations. She did not offer any testimony or evidence contesting the allegation that she missed all treatment sessions but one in the Spring of 2010. Moreover, defendant has not challenged the court's finding that she willfully and without lawful excuse violated a condition of probation by testing positive for methamphetamines, cocaine, and opiates on 17 May

2010. Thus, even if the findings of the other violations are accepted as error, the error is harmless because only one violation of one condition of probation is needed to revoke probation. See *State v. Belcher*, 173 N.C. App. 620, 625, 619 S.E.2d 567, 570 (2005).

Defendant also contends that the court erred by failing to make findings of fact which reflected consideration of her evidence. We reject this contention. At the conclusion of the hearing, the court announced that it found defendant willfully violated the terms and conditions of probation and that it adopted as findings of fact the allegations in the probation violation report. A court is not required to make explicit findings "on each of defendant's allegations tending to justify his breach of conditions." *State v. Williamson*, 61 N.C. App. 531, 535, 301 S.E.2d 423, 426 (1983).

Defendant lastly contends that the court erred in revoking probation because she was not provided with a written statement explicitly setting forth the conditions of probation. Defendant, however, never raised this issue in the trial court. Error may not be asserted on appeal unless the error was brought to the attention of the trial court by appropriate and timely request, objection, or motion. N.C. Gen. Stat. § 15A-1446(a)

(2009); N.C.R. App. P. 10(a)(1) (2010). Acknowledging her failure to raise the issue in the court below, defendant has asked this Court to find plain error. We decline to find plain error for two reasons. First, plain error review is limited to challenges to the admissibility of evidence and jury instructions. *State v. Cummings*, 346 N.C. 291, 313-14, 488 S.E.2d 550, 563 (1997). Second, even if plain error review were available, defendant may not prevail because the judgment contains all of the terms and conditions of probation in writing, and defendant does not claim she did not receive the written judgment. Defendant's reliance upon *State v. Lambert*, 146 N.C. App. 360, 368, 553 S.E.2d 71, 78 (2001), is misplaced because in that case the court orally modified the terms and conditions of probation but failed to include the oral modifications in the written judgment.

We affirm the judgment.

Affirmed.

Judges McGEE and ELMORE concur.

Report per Rule 30(e).