NO. COA01-1264

NORTH CAROLINA COURT OF APPEALS

Filed: 21 May 2002

STATE OF NORTH CAROLINA

v. Forsyth County
Nos. 99CRS3304
MARGARET BETH BARRON 99CRS42396

Appeal by defendant from judgment entered 9 July 2001 by Judge Clarence W. Carter in Forsyth County Superior Court. Heard in the Court of Appeals 13 May 2002.

Attorney General Roy A. Cooper, III, by Assistant Attorney General Angel E. Gray, for the State.

Robert W. Ewing for defendant-appellant.

HUNTER, Judge.

On or about 5 January 2000, defendant was sentenced as an habitual felon on an underlying charge of obtaining a controlled substance by fraud. In light of defendant's mental condition and drug addiction, the trial court suspended defendant's sentence of 100-129 months' imprisonment and placed her on supervised probation for sixty months. The court also ordered that defendant serve a split active sentence of twenty-six months and enroll in Mary Francis Treatment Center while in custody. On 9 March 2000, the trial court entered an amended judgment in which the split sentence

and enrollment in the treatment center were deleted. The amended judgment required that defendant be on supervised probation for sixty months, with regular conditions of probation as detailed in N.C. Gen. Stat. § 15A-1343(b) and the following special conditions of probation: (1) submit to warrantless searches by her probation officer; (2) not use, possess, or control any illegal drug or substance; (3) submit to urine or breath analysis, and (4) enroll in a residential drug treatment program for twelve to twenty-four months. The first six months of defendant's probationary period were to be under the Intensive Probation Supervision Program.

After completing the first six months of intensive probation, defendant was assigned a new probation officer, K. W. Broome, to complete the remaining portion of her probationary sentence. On 22 May 2001, Broome filed a violation report stating that defendant had violated Regular Condition of Probation #6 by failing to attend a scheduled appointment on 22 May 2001. The report also noted that defendant had threatened to kill her mother, was "a threat to herself and others," and failed to "follow up with medical appointments with [a particular physician]."

This matter was heard in the superior court on or about 9 July 2001. The State's evidence tends to show the following: After being assigned defendant's case, Broome met with her on 17 May 2001 and explained the terms of her probation. At that time, Broome informed defendant that her first office visit was scheduled for 9:00 a.m. on 22 May 2001. When Broome arrived at his office on 22 May 2001, he found a message from defendant indicating that she

could not attend the 9:00 a.m. appointment because of a doctor's appointment which had also been scheduled for that same morning. Shortly thereafter, Broome also received a telephone call from Penny Powers, an employee at Step One Advising (a drug treatment program), who informed Broome that defendant had also called to cancel an appointment for that morning due to sickness. Powers told Broome that she suspected that defendant was "back into her old habits of using prescription drugs."

Troubled by Powers' telephone call, Broome telephoned defendant and spoke with her for approximately five to seven minutes. During the conversation, Broome noticed that defendant was incoherent and mumbling on the telephone, and told her that he would be traveling to her residence later that day. When Broome, accompanied by another probation officer who was familiar with defendant, arrived at defendant's residence, he was met at the door by defendant's parents. Defendant's parents informed Broome that defendant had threatened to take the car "and go over to 14th Street . . . and buy drugs," and had threatened to kill them both. The parents stated that they were frightened of their daughter, and "scared to leave her [at the house] or sleep at night." The two probation officers then went upstairs to find defendant's bedroom door locked. Defendant initially refused to open the door, but after about ten minutes, the two persuaded defendant to open the door. Upon being questioned about her doctor's appointment, defendant gave nonsensical answers, and replied that she was "too sick to go to the doctor." Although defendant stated that she had

bronchitis and was "running a hundred and two [degree] temperature," Broome noted that he did not notice anything unusual about her physical appearance. Broome formed an opinion that defendant was under the influence of a prescription drug. He therefore requested a urine sample for a drug test. After giving Broome a urine sample and getting dressed, defendant accompanied Broome to his office.

While en route to his office, Broome informed defendant that he was placing her under arrest "for her mother's safety . . . as well as her own." After arriving at the office, defendant was not cooperative. In fact, Broome testified that defendant was "rolling up and down the hallway threatening, cursing." Defendant also attempted to stab herself in the neck with a letter opener. On cross-examination, Broome noted that after completing the violation report, he learned from defendant's physician that defendant had indeed been diagnosed with bronchitis on or about 15 May 2001. Notably, defendant had cancelled her 22 May 2001 follow-up appointment with her medical doctor. Defendant did not present any evidence.

After hearing the evidence and arguments of counsel, the trial court found and concluded that defendant willfully violated the terms of her probation. The Court revoked defendant's probation and activated defendant's suspended sentence. Defendant appeals. We affirm.

The first issue presented by defendant on appeal is whether the trial court erred in finding and concluding that she willfully

violated the terms of her probation and in revoking her probation. It is well settled that "'probation or suspension of sentence is an act of grace' and not a right." *State v. Alston*, 139 N.C. App. 787, 794, 534 S.E.2d 666, 670 (2000) (quoting *State v. Baines*, 40 N.C. App. 545, 550, 253 S.E.2d 300, 303 (1979)). To that end, the State need only present evidence "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). Moreover, "[a]ny violation of a valid condition of probation is sufficient to revoke [a] defendant's probation." *State v. Tozzi*, 84 N.C. App. 517, 521, 353 S.E.2d 250, 253 (1987).

In the case *sub judice*, the State presented the testimony of defendant's probation officer, Broome, which tends to show that defendant failed to attend a scheduled meeting with Broome on 22 May 2001. Broome testified that he became suspicious of defendant's excuse for missing her appointment after talking with defendant's counselor at Step One Advising, and then defendant over the telephone. Broome stated that he subsequently traveled to defendant's residence, where he spoke with defendant's parents, who expressed their fear of defendant and detailed her threats to physically harm them. Broome also stated that he talked to defendant and formed the opinion that she was under the influence of a prescription drug. After he had obtained a urine sample from

defendant for drug testing, Broome instructed defendant to get dressed and accompany him to his office. Broome testified that once at his office, defendant again began to speak incoherently -- ranting and raving about her educational background and the fact that she was a good person -- and later "rolling up and down the hallway" in Broome's office, cursing, and attempting to stab herself in her neck. Subsequently, Broome discovered that defendant did have an appointment with a physician on 22 May 2001. However, she had called to cancel that appointment. Broome noted that a drug test analysis, performed after the probation violation reports were completed, indicated that defendant had been under the influence of prescription medication on 22 May 2001.

On these facts, we conclude that the trial court had before it that quantum of evidence to support a finding that defendant, willfully and without lawful excuse, failed to attend a scheduled appointment with her probation officer. While defendant argues that her failure to attend the appointment was not willful nor without lawful excuse, we disagree. It is well established that in matters such as these, the credibility of the witnesses and the evaluation and weight of their testimony is for the judge. *State v. Booker*, 309 N.C. 446, 450, 306 S.E.2d 771, 774 (1983). This one violation of probation alone is sufficient to support the revocation of defendant's probation and activation of her suspended sentence. *See Tozzi*, 84 N.C. App. at 521, 353 S.E.2d at 253. We therefore need not further consider the propriety of the trial

court's decision based upon the other ground utilized by the trial court in revoking defendant's probation.

In sum, we hold that the trial court did not err in concluding that defendant willfully violated the terms of her probation and in revoking her probation. Accordingly, the judgment of the trial court is affirmed.

Affirmed.

Judges MARTIN and BRYANT concur.

Report per Rule 30(e).