NO. COA01-994

NORTH CAROLINA COURT OF APPEALS

Filed: 4 June 2002

STATE OF NORTH CAROLINA

v. Buncombe County
Nos. 98 CRS 10548,
98 CRS 10549,
98 CRS 60418

CHARLES BENJAMIN MURRAY,
Defendant.

Appeal by defendant from judgments entered 10 August 2000 by Judge Dennis J. Winner in Buncombe County Superior Court. Heard in the Court of Appeals 28 May 2002.

Attorney General Roy Cooper, by Assistant Attorney General Susan R. Lundberg, for the State.

Haley H. Montgomery for defendant-appellant.

HUDSON, Judge.

Defendant appeals from judgments revoking probation and activating three sentences of thirteen to sixteen months for three counts of taking indecent liberties with a minor. The violation reports charged that defendant: (1) failed to provide the sheriff with his change of address as required by N.C. Gen. Stat. § 14-208.9 (1999); (2) failed to complete specialized sexual offender treatment and pay the costs associated with the treatment; and (3) failed to abide with curfew on 8 July 2000. At the close of the hearing the court stated that defendant willfully committed the

second and third charged violations. In the judgments entered in each case, however, the court indicated only that defendant had violated the condition set forth in paragraph 5 of the Violation Report, which is the first violation charged.

Preliminarily we note that defendant did not give timely notice of appeal. The judgments were entered on 10 August 2000 but the notice of appeal was not filed until 22 August 2000, one day late. Notwithstanding, we treat the record and brief as a petition for writ of certiorari and allow the same.

Defendant contends that the evidence was insufficient to establish that the violations were willful and without lawful excuse. The burden is on the defendant to bring forth facts which "demonstrate that he has a lawful excuse for his probation violation." *State v. Hill*, 132 N.C. App. 209, 212, 510 S.E.2d 413, 415 (1999) (citing *State v. Smith*, 43 N.C. App. 727, 259 S.E.2d 805 (1979)). Here, the trial court heard testimony from the defendant's probation officer, Todd Carter, and also from defendant, and relied upon the violation reports submitted by defendant's probation officer. Defendant did not object to the court's reliance on these reports as evidence of defendant's violations. The Court, in *State v. White*, noted that, "[b]ecause formal rules of evidence do not apply at a probation revocation hearing, a probation officer's written report of a probation violation is admissible in evidence." 129 N.C. App. 52, 58, 496 S.E.2d 842, 846 (1998), *aff'd*, 350 N.C. 302, 512 S.E.2d 424 (1999) (per curiam).

"Probation is an act of grace by the State to one convicted of a crime." *State v. Freeman,* 47 N.C. App. 171, 175, 266 S.E.2d 723, 725, *disc. review denied,* 301 N.C. 99, 273 S.E.2d 304 (1980). A person on probation "carries the keys to his freedom in his willingness to comply with the court's sentence." *State v. Robinson*, 248 N.C. 282, 285, 103 S.E.2d 376, 379 (1958). To revoke probation "[a]ll 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 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). Proof beyond a reasonable doubt is not necessary. *State v. Tozzi*, 84 N.C. App. 517, 521, 353 S.E.2d 250, 253 (1987). The defendant has the burden of showing excuse or lack of willfulness; otherwise, evidence of failure to comply is sufficient to support a finding that the violation was willful or without lawful excuse. *State v. Crouch*, 74 N.C. App. 565, 567, 328 S.E.2d 833, 835 (1985). A single violation is sufficient to revoke the defendant's probation. *Freeman*, 47 N.C. App. at 176, 266 S.E.2d at 725.

The first violation alleged was that defendant failed to notify the sheriff within ten days of his move to Weaverville, as required by N.C.G.S. § 14-208.9. Defendant acknowledged this failure, but testified that he "forgot." The court apparently concluded that this testimony did not satisfy defendant's burden.

We agree.

The State's evidence shows that defendant failed to complete a specialized sexual offender treatment program because he had been noncompliant with a previous program and the new provider would not take him until he paid the $355 owed to the previous provider and made full pre-payment to the new treatment provider. Defendant stated that he could not afford to pay the arrearage because of financial difficulties and that his attempts to schedule payments met with no response. The State's evidence showed that defendant did have a job earning approximately $119 to $149 per week. Despite being urged by his probation officer to pay some amount toward reducing the arrearage, defendant paid nothing. Defendant admitted on cross examination that he had been found noncompliant with two sexual offender treatment programs and that the current charges were the fourth time he had violated probation. He did not deny the alleged curfew violation.

We hold the court did not abuse its discretion in revoking defendant's probation based on the failure to notify the sheriff of his changed address, which is the only violation found in the judgments. We decline to address whether the evidence was sufficient on the other two violations, since they were not entered on the judgments. We affirm the judgments activating the sentences.

Affirmed.

Judges GREENE and TYSON concur.

Report per Rule 30(e).