

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA03-1662

NORTH CAROLINA COURT OF APPEALS

Filed: 19 October 2004

STATE OF NORTH CAROLINA

v.

Gaston County
No. 03 CRS 5607

TERRY L. SANDERS

Appeal by defendant from judgment entered 23 June 2003 by Judge David S. Cayer in Gaston County Superior Court. Heard in the Court of Appeals 18 October 2004.

Attorney General Roy Cooper, by Special Deputy Attorney General Mabel Y. Bullock, for the State.

Gregory A. Newman for defendant-appellant.

LEVINSON, Judge.

Defendant pled guilty to conspiracy to traffic cocaine on or about 8 October 1999. The trial court sentenced defendant to a suspended sentence of 35-42 months imprisonment, and placed him on supervised probation for 60 months. The trial court also imposed a \$10,000.00 fine on defendant. On or about 17 March 2003, defendant's probation officer filed a violation report with the superior court, alleging that defendant had violated the terms and conditions of his probation by (1) missing scheduled office visits on 30 April 2002 and 23 July 2002, and (2) failing to fulfill the monetary condition of his probation.

The matter of defendant's probation violations was heard by Judge David Cayer in Gaston County Superior Court on 23 June 2003. The State presented the testimony of defendant's probation officer, LaShanta Powe, which tended to show that defendant missed two monthly scheduled office visits as alleged in the violation report. Powe explained that, though she was not defendant's probation officer at the time, notations in defendant's file made by defendant's previous probation officer showed that defendant had been notified in person on 19 March 2002 of the 30 April 2002 visit; and had been notified in person on 25 June 2002 of the 23 July 2002 visit. Powe began supervising defendant on 31 December 2002.

Powe testified that defendant had been on probation for approximately four years, and had passed all drug tests. However, despite being employed and having a gross salary of \$21,000.00, Powe explained that defendant paid no money toward his court costs, fine and community service fee. Powe stated that defendant was originally ordered to pay \$195.00 per month, but that amount was reduced when it was determined that he was unable to make full payment. Powe explained, "it was emphasized to him to pay something to show some effort to do something, and so we did not enforce the 195, but we said make an effort to pay something." Finally, Powe noted that she and her chief had encouraged defendant to find another job because his employment frequently required him to travel out of town.

Defendant testified on his own behalf. He stated that he had

three probation officers since being placed on probation in October 1999. Defendant noted that at one time, there was a period of about three months, during which he did not hear from anyone concerning his case. He denied being personally aware of the scheduled office visits on 30 April 2002 and 23 July 2002. In fact, defendant stated that probation officer Shawn McGinnis told him that he had left a message with his mother about the 23 July 2002 appointment. Defendant explained that his mother was 77 years old and may have forgotten to tell him about the call. Defendant admitted that he had been discharged from Bankruptcy in June 2002. Further, he conceded that he had not made any payments toward his monetary obligations of probation because of home maintenance and repair work needs.

After hearing the evidence and arguments of counsel, the trial court found and concluded that defendant had willfully and without lawful excuse violated the terms and conditions of his probation as alleged in the 17 March 2003 probation violation report. The court revoked defendant's probation and activated his suspended sentence. Defendant appeals.

Defendant's sole argument on appeal is that the trial court erred in finding that the evidence was sufficient to show that he wilfully violated the terms and conditions of his probation. We disagree.

It is well settled that since probation is "an act of grace by the State to one convicted of a crime," *State v. Hill*, 132 N.C. App. 209, 211, 510 S.E.2d 413, 414 (1999) (quoting *State v.*

Freeman, 47 N.C. App. 171, 175, 266 S.E.2d 723, 725 (1980)), "a proceeding to revoke probation is not bound by strict rules of evidence and an alleged violation of a probationary condition need not be proven beyond a reasonable doubt." *Id.* "All that is required is that the evidence be sufficient to reasonably satisfy the judge in the exercise of his sound discretion that the defendant has willfully violated a valid condition of probation." *State v. White*, 129 N.C. App. 52, 58, 496 S.E.2d 842, 846 (1998). "[O]nce the State has presented competent evidence establishing a defendant's failure to comply with the terms of probation, the burden is on the defendant to demonstrate through competent evidence an inability to comply with the terms." *State v. Terry*, 149 N.C. App. 434, 437-38, 562 S.E.2d 537, 540 (2002). "If the trial court is then reasonably satisfied that the defendant has violated a condition upon which a prior sentence was suspended, it may within its sound discretion revoke the probation." *Id.* at 438, 562 S.E.2d at 540. This Court has long held, "[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 instant case, the State's evidence was that defendant had been notified in person on 19 March 2002 of the 30 April 2002 scheduled meeting; and had been notified during his 25 June 2002 office visit of the 23 July 2002 scheduled meeting. The State's evidence further showed that though defendant had been employed at all pertinent times until February 2003, and that his payments had

been reduced in an effort to allow him to meet his monetary obligation of probation, defendant had made no payment for the four years he had been on probation.

Defendant denied ever being informed about the scheduled monthly meetings for April and June 2002. As to the allegation that he failed to comply with the monetary obligations of probation, defendant noted that he had filed bankruptcy at the time that he was placed on probation. He testified extensively regarding his salary and expenses: that he grossed approximately \$1,100 per month from his employment; that he had a mortgage of \$715 per month on which he owed twenty-five more years; and that his payments under bankruptcy were \$298 per month. However, even after he was discharged from bankruptcy, in June of 2002, defendant failed to make any payments on his probationary obligation. He admitted to having the "extra money," but stated that he decided to make needed repairs to his residence.

We conclude that the State presented sufficient evidence of defendant's violations of certain terms and conditions of his probation. Even if defendant's evidence were taken as true, it is uncontroverted that at the time that he had the "extra money" to pay something towards the monetary obligation of his probation, he chose to use that money for something else. At the time of the hearing, defendant had made no payments towards this obligation. Defendant's evidence simply does not show an inability to comply with this particular term of his probation. In light of the State's evidence showing the willful violation of the terms and

conditions of defendant's probation, and defendant's failure to satisfy the presiding judge otherwise, we hold that the court did not abuse its discretion in revoking defendant's probation.

Having so concluded, the judgment of the trial court is affirmed.

Affirmed.

Judges TIMMONS-GOODSON and CALABRIA concur.

Report per Rule 30(e).