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NO. COA05-1108

NORTH CAROLINA COURT OF APPEALS

Filed: 18 April 2006

STATE OF NORTH CAROLINA

v.

VERNON DEMOND McPHERSON,
Defendant.

Cabarrus County
Nos. 03 CRS 1003
04 CRS 5382

Appeal by Defendant from judgments entered 20 January 2005 by Judge W. Erwin Spainhour in Superior Court, Cabarrus County. Heard in the Court of Appeals 20 March 2006.

Attorney General Roy Cooper, by Assistant Attorney General Scott T. Slusser, for the State.

Allen W. Boyer for defendant-appellant.

WYNN, Judge.

"All that is required to revoke probation is evidence satisfying the trial court in its discretion that the defendant violated a valid condition of probation without lawful excuse." *State v. Tozzi*, 84 N.C. App. 517, 521, 353 S.E.2d 250, 253 (1987) (citations omitted). Because we find that the State presented competent evidence to support the trial court's finding that Defendant willfully, and without lawful excuse, violated terms of his probation, we affirm the decision of the trial court.

On 24 June 2003, Defendant Vernon Demond McPherson pled guilty

to two counts of indecent liberties with a minor (03 CRS 1003). The trial court sentenced Defendant to thirteen to sixteen months imprisonment, suspended the sentence and placed Defendant on twenty-four months supervised probation. A year later, a jury found Defendant guilty of failure to register as a sex offender (04 CRS 05382). The trial court sentenced Defendant to twenty-one to twenty-six months imprisonment, to be served at the expiration of "any sentence he is presently serving." The trial court suspended the sentence and placed Defendant on supervised probation for sixty months. The trial court subsequently entered orders in each case modifying Defendant's probation.

In October of 2004, Defendant's probation officer filed a probation violation report in case 03 CRS 1003 alleging that Defendant: (1) failed to meet his curfew; (2) was in arrears on his court monetary obligation; (3) moved without having prior approval; (4) failed to notify his probation officer that he was terminated from his job; (5) was in arrears on his sex abuse treatment program monetary obligation; (6) failed to obtain full-time employment; and (7) left Cabarrus County without prior approval. In case number 04 CRS 5382, Defendant's probation officer alleged that Defendant (1) failed to meet his curfew; (2) moved without prior approval; (3) failed to notify his probation officer that he was terminated from his job; (4) failed to obtain full-time employment; and (5) left Cabarrus County without prior approval.

Judge Erwin W. Spainhour held a probation violation hearing on 20 January 2005. Defendant denied that he willfully violated his

probation. Defendant's probation officer testified that Defendant rented his residence in Rowan County on 27 August 2004, and that she verified this date with Defendant's Rowan County landlord. Defendant's probation officer further testified that she did not give Defendant permission to leave Cabarrus County and move to Rowan County; that Defendant left Cabarrus County without prior approval; and that Defendant did not notify her of his move to Rowan County until 10 September 2004, although she and Defendant met on 30 August 2004 and 9 September 2004. With regards to Defendant's employment, Defendant's probation officer testified that she confirmed that Defendant was terminated from the Jack-in-the-Box on 4 September 2004. Defendant, however, told his probation officer he was still working at the Jack-in-the-Box, but he had not been put on the schedule. Defendant's probation officer testified that although Defendant told her he was still working at Taco Bell as of 5 January 2005, she confirmed that Defendant was terminated from Taco Bell on 7 December 2004.

Defendant testified that he told his probation officer that he would be moving, but that he did not know where he would be moving. Defendant testified his probation officer responded by telling him to "make sure you register within ten days" and to inform her of his new address. Defendant testified that he moved to Rowan County on 10 September 2004, and registered in Rowan and Cabarrus Counties. Defendant testified that he notified his probation officer when he changed jobs. Defendant admitted that he left Jack-in-the-Box "[s]ometime in September, like the end of August."

By orders entered 20 January 2005, the trial court found that Defendant willfully and without lawful excuse violated the terms and conditions of probation in each case. In case number 04 CRS 5382 the trial court found that Defendant violated his probation by: (1) failing to notify his probation officer that he was terminated from his employment; (2) failing to obtain or retain full-time employment; and (3) leaving Cabarrus County without prior approval. In case number 03 CRS 1003, the trial court found that Defendant violated his probation by: (1) moving without prior approval; (2) failing to obtain full-time employment; and (3) leaving Cabarrus County without prior approval. The trial court revoked Defendant's probation and activated Defendant's sentences. Defendant appeals.

Defendant contends the trial court erred by concluding that he willfully violated a condition of his probation without lawful excuse and in revoking his probation. We disagree.

It is well settled that "probation or suspension of sentence comes as an act of grace to one convicted of, or pleading guilty to, a crime.'" *State v. Tennant*, 141 N.C. App. 524, 526, 540 S.E.2d 807, 808 (2000) (quoting *State v. Duncan*, 270 N.C. 241, 245, 154 S.E.2d 53, 57 (1967)). All that is required in a hearing to revoke probation 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). A verified probation violation report is competent evidence sufficient to support revocation of probation. *State v. Gamble*, 50 N.C. App. 658, 661, 274 S.E.2d 874, 876 (1981). Once the State meets its burden, the burden then shifts to the defendant to "present competent evidence of his inability to comply with the conditions of probation; and that otherwise, evidence of defendant's failure to comply may justify a finding that defendant's failure to comply was willful or without lawful excuse." *Tozzi*, 84 N.C. App. at 521, 353 S.E.2d at 253. "Any violation of a valid condition of probation is sufficient to revoke [a] defendant's probation." *Id.*

Here, Defendant's probation officer testified that she did not give Defendant approval to leave Cabarrus County and that Defendant did not tell her that he moved to Rowan County until 10 September 2005, more than ten days after he rented the Rowan County residence. Defendant did not offer any evidence of excuse or lack of willfulness in regard to leaving Cabarrus County without prior approval. We conclude that there is evidence in the record to support the judge's findings that Defendant willfully and without lawful excuse violated the conditions of his probation.

Affirmed.

Judges MCGEE and HUNTER concur.

Report per Rule 30(e).