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NO. COA05-1211

NORTH CAROLINA COURT OF APPEALS

Filed: 16 May 2006

STATE OF NORTH CAROLINA

v.

Durham County
No. 02 CRS 15306

CHARLES REGINALD BATTLE

Appeal by defendant from judgment entered 5 May 2005 by Judge Orlando F. Hudson in Superior Court, Durham County. Heard in the Court of Appeals 24 April 2006.

Attorney General Roy Cooper, by Assistant Attorney General Christine A. Goebel, for the State.

James N. Freeman, Jr. for defendant-appellant.

McGEE, Judge.

Charles Reginald Battle (defendant) pled guilty on 22 November 2002 to obtaining property by false pretenses and to having attained habitual felon status. The trial court sentenced defendant to 101 months to 131 months in prison, suspended the sentence and placed defendant on 36 months supervised probation. As a special condition of probation, the trial court ordered defendant to "[a]ttend or reside in TROSA residential program for a period of 24 months[.]"

Defendant's probation officer filed a probation violation

report on 31 January 2003 alleging that: "On November 22, 2002, . . . defendant was court ordered by [Judge] Orlando F. Hudson to complete the TROSA program. To date . . . defendant has failed to report to the TROSA program nor has defendant reported to the probation department to be provided adequate supervision. . . . [D]efendant is thus absconding supervision." A probation violation hearing was held on 5 May 2005. Defendant, through his attorney, admitted that he did not report to TROSA or to his probation officer. Defendant's attorney also informed the trial court that there was confusion as to who was defendant's probation officer and as to when defendant was supposed to report to TROSA. Defendant's attorney stated that defendant had "attempted on several occasions to locate his probation officer, that [defendant] was given what he calls is 'the runaround.'"

Defendant testified that "it was confusion. I didn't know if my probation officer was male or female. And I didn't know . . . if I had to report, just like he said, straight to TROSA or what." Defendant noted that he "wasn't out there obtaining . . . additional warrant[s]" and that "if they had . . . let me know who my probation officer was, then I wouldn't have had no problem about doing that." The trial court responded: "I understand there was some problem in there. I'm not sure exactly what the problem was." The trial court subsequently revoked defendant's probation, finding that defendant willfully and without lawful excuse violated the terms and conditions of probation. 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.

"'[P]robation 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)). The evidence required in a hearing to revoke probation must "reasonably satisfy the [trial court] in the exercise of [its] 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 a defendant to "present competent evidence of his inability to comply with the conditions of probation; and that otherwise, evidence of [the] defendant's failure to comply may justify a finding that [the] defendant's failure to comply was wilful or without lawful excuse." *State v. Tozzi*, 84 N.C. App. 517, 521, 353 S.E.2d 250, 253 (1987). "Any violation of a valid condition of probation is sufficient to revoke [a] defendant's probation." *Id.*

In this case, it was alleged in the violation report that defendant violated his probation because he failed to report to the TROSA program and to the probation department after he was placed

on probation in November 2002. Defendant admitted that he had not reported to the program but testified that "confusion" rendered him unable to comply with those particular conditions of his probation. The trial court determined that defendant's explanation was not a lawful excuse for his probation violation. We conclude that there is evidence in the record to support the trial court's findings that defendant willfully and without lawful excuse violated the conditions of his probation.

Defendant contends the trial court erred in revoking defendant's probation without making sufficient findings of fact to show that it had weighed and considered defendant's evidence. We disagree.

On the judgment form, the trial court made a finding that defendant had violated the specified conditions of his probation as alleged in the probation violation report on file, which was incorporated by reference into the judgment. The trial court made these findings "[a]fter considering the record contained in the files numbered above, together with the evidence presented by the parties and the statements made on behalf of the State and . . . defendant[.]"

A trial court is not required to make specific findings of fact regarding each of a defendant's allegations. *State v. Williamson*, 61 N.C. App. 531, 535, 301 S.E.2d 423, 426 (1983).

As this Court explained in *Williamson*:

Although the [trial court] could have been more explicit in the findings by stating that [it] had considered and evaluated [the] defendant's evidence . . . and found it

insufficient to justify breach of the probation condition, we hold that [its] failure to do so does not constitute an abuse of discretion. It would not be reasonable to require that a [trial court] make specific findings of fact on each of [the] defendant's allegations tending to justify his breach of conditions.

Id. The transcript and record show the trial court properly considered the evidence before it and did not abuse its discretion in revoking defendant's probation. Therefore, we affirm the judgment of the trial court.

Affirmed.

Judges WYNN and HUNTER concur.

Report per Rule 30(e).