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NO. COA05-1343

NORTH CAROLINA COURT OF APPEALS

Filed: 6 June 2006

STATE OF NORTH CAROLINA

v.

MARK ANTONIO DUBOSE

Johnston County  
Nos. 01CRS11348  
01CRS56936

Appeal by defendant from judgments entered 16 March 2005 by Judge Knox V. Jenkins, Jr., in Johnston County Superior Court. Heard in the Court of Appeals 8 May 2006.

*Attorney General Roy A. Cooper, III, by Assistant Attorney General P. Bly Hall, for the State.*

*D. Tucker Charns for defendant-appellant.*

HUNTER, Judge.

Mark Antonio Dubose ("defendant") appeals from judgments entered upon revocation of his probation. For the reasons stated herein, we affirm.

On 28 November 2001, defendant pled guilty to possession with intent to sell or deliver cocaine and possession of a firearm by a convicted felon. The trial court sentenced him to consecutive suspended prison terms totaling twenty-five to thirty-one months.

In reports filed 23 August 2004, defendant was charged with violating five conditions of his probation, including the requirement that he "[r]eport as directed by the court or his

probation officer to the officer at reasonable times and places[.]” N.C. Gen. Stat. § 15A-1343(b)(3) (2005). Specifically, the violation reports alleged that “defendant has failed to report to the probation dep[artment] in any manner since [13 October 20]03.”

At a hearing held 14 March 2005, probation officer Jansen Lee (“Lee”) testified that defendant reported to her office as scheduled on 13 October 2003, failed to appear at his next scheduled appointment on 27 October 2003, and completely “disappeared” thereafter. Although defendant left Lee a phone message on 27 October 2003, saying that he was working and would have to reschedule his appointment, he did not contact or visit Lee again. Defendant was arrested and jailed on other charges in July of 2004. Lee next saw defendant when she visited him in jail on 20 January 2005.

At the beginning of defendant’s testimony, the trial court directed defense counsel to address the issue of “why [defendant] didn’t report as directed from October until he was jailed in July[,]” in lieu of the other charged violations. When counsel asked defendant whether he had reported to Lee between October of 2003 and July of 2004, he testified, “I can’t recall. I think I s[aw] her within the time frame of that, but I can’t really recall.”

Based upon the evidence, the trial court announced in open court its finding that defendant “[w]illfully failed and refused to contact his probation officer or report to his probation officer as directed during the months of December 2003, January 2004, February

2004, March, April, May and June of 2004." Finding defendant's actions to be "a willful violation of the terms and conditions of his probationary judgments[,] " the court revoked his probation and activated his suspended sentences. Defendant gave notice of appeal in open court.

On appeal, defendant claims the trial court abused its discretion by revoking his probation based upon written findings that he violated the conditions of probation as alleged "in paragraph(s) 1 in the Violation Report[s.]" Defendant points out that paragraph 1 of the violation reports alleged that he failed "to report to the probation dep[artment] in any manner since [13 October 20]03[,] " while the State's evidence showed that he left a phone message for Lee on 27 October 2003.

" "[P]robation 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)). Accordingly, our Courts have held that a probation revocation hearing is an "informal or summary" proceeding in which the formalities of a criminal trial do not adhere. *State v. Hewett*, 270 N.C. 348, 353, 154 S.E.2d 476, 479 (1967); *State v. Freeman*, 47 N.C. App. 171, 175, 266 S.E.2d 723, 725 (1980). "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). " "The findings of

the judge, if supported by competent evidence, and his judgment based thereon are not reviewable on appeal, unless there is a manifest abuse of discretion.'" *Tennant*, 141 N.C. App. at 526, 540 S.E.2d at 808 (quoting *State v. Guffey*, 253 N.C. 43, 45, 116 S.E.2d 148, 150 (1960)).

We find no abuse of discretion here. Although the trial court's shorthand reference to paragraph 1 of the violation reports does not account for the phone message left by defendant on 27 October 2003, this technical error in the temporal scope of the court's written findings was completely harmless, affecting neither the court's ultimate finding of defendant's willful violation of probation nor its decision to revoke his probation based thereon. *Cf. State v. Crump*, 277 N.C. 573, 583, 178 S.E.2d 366, 372 (1971) (concluding that, although no evidence supported one of the trial court's findings of fact on *voir dire*, the erroneous finding did not undermine the court's ruling and did not prejudice the defendant). The fact that defendant left a message for Lee on one occasion after 13 October 2003 did not undermine the court's finding that he willfully failed to report as directed to Lee at reasonable times and places. The evidence showed defendant never rescheduled the appointment he missed on 27 October 2003 and failed to contact Lee in any manner for more than nine months thereafter. *Cf. State v. Coffey*, 74 N.C. App. 137, 139, 327 S.E.2d 606, 607 (1985) (holding the evidence "support[ed] the court's finding that defendant failed to report to the probation officer at reasonable times and in a reasonable manner as directed by her probation

officer"). Moreover, the court's findings in open court reflect that it elected to revoke defendant's probation and activate his suspended sentences based upon his failure to report during the period from December 2003 through June 2004.

The record on appeal includes an additional assignment of error not addressed by defendant in his brief to this Court. Pursuant to N.C.R. App. P. 28(b)(6), we deem it abandoned.

Affirmed.

Judges WYNN and McGEE concur.

Report per Rule 30(e).