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NO. COA05-1434

NORTH CAROLINA COURT OF APPEALS

Filed: 17 October 2006

STATE OF NORTH CAROLINA

v.

CHRISTOPHER WERNER LEUPOLD

Yadkin County

No. 03 CRS 2033; 03 CRS 2034
03 CRS 2035; 03 CRS 2036
03 CRS 2037; 03 CRS 2038
03 CRS 2039

Appeal by defendant from judgment entered 6 June 2005 by Judge James M. Webb in Yadkin County Superior Court. Heard in the Court of Appeals 18 September 2006.

Roy Cooper, Attorney General, by Diane Martin Pomper, Assistant Attorney General, for the State.

Robert W. Ewing for defendant-appellant.

MARTIN, Chief Judge.

On 7 June 2004, defendant pled guilty, pursuant to a plea agreement, to eight counts of aiding and abetting obtaining property by false pretenses. He was sentenced to an active sentence of not less than six nor more than eight months on one count, followed by seven consecutive sentences of not less than six nor more than eight months, which were suspended and the defendant was placed on probation for five years. As conditions of probation, defendant was ordered to make restitution of \$578,519.65 jointly and severally with a co-defendant and to perform 50 hours

of community service within the first 150 days of probation. Defendant also signed an Acknowledgment and Monetary Conditions as part of his plea agreement in which he agreed to pay \$9,500 per month beginning 30 days after release from his active sentence, with \$35,000 to be paid by 6 February 2005.

Defendant was released from prison on 24 December 2004. On 8 February 2005, the probation officer filed a violation report on each count alleging that defendant had failed to pay the \$35,000 and that defendant had not completed the required 50 hours of community service. At the revocation hearing on 6 June 2005, the State presented evidence that defendant had not completed the 50 hours of community service. The State also presented evidence that defendant had paid only \$400 of the \$35,000 due as a condition of his probation.

Defendant presented evidence that he had completed the 50 hours of community service by sitting and listening to court in Surry County. Defendant and his mother also testified that he had planned to pay the \$35,000 from a gift he expected from his grandmother. By the time that defendant had finished serving his active sentence, his grandmother had passed away and her assets remained in probate awaiting distribution. Defendant also developed health conditions that prevented him from working, and he filed for SSI in February 2005.

Upon consideration of the evidence presented at the hearing, the trial court found that the defendant had willfully violated both the community service condition and the monetary condition of

his probation. The court entered orders revoking probation and activating the suspended sentences. Defendant appeals.

On appeal, the defendant makes the following two arguments: (1) the trial court abused its discretion when revoking the defendant's probation because the evidence proved that defendant's failure to comply with the monetary terms of his probation was not a willful violation; and (2) the trial court abused its discretion when revoking the defendant's probation because the evidence did not support a finding that the defendant did not complete his community service requirement. We hold that the trial court did not abuse its discretion and properly revoked probation based on defendant's violation of the monetary condition.

We first note the settled law relating to these issues. "Any violation of a valid condition of probation is sufficient to revoke defendant's probation." *State v. Tozzi*, 84 N.C. App. 517, 521, 353 S.E.2d 250, 253 (1987).

The alleged violation by the defendant of a valid condition [of probation] need not be proven beyond a reasonable doubt.

All 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 violated a valid condition upon which the sentence was suspended.

State v. Robinson, 248 N.C. 282, 285-86, 103 S.E.2d 376, 379 (1958) (internal citations omitted). Once the State presents evidence that defendant has violated a condition of probation, the defendant then bears the burden of proving that he was unable to comply with conditions of probation and, thus, the violation was not willful or

was with lawful excuse. *Tozzi*, 84 N.C. App. at 521, 353 S.E.2d at 253. Although a defendant may present such evidence, "[t]he trial judge, as the finder of the facts, is not required to accept defendant's evidence as true." *State v. Young*, 21 N.C. App. 316, 321, 204 S.E.2d 185, 188 (1974). N.C. Gen. Stat. § 15A-1345(e) requires the court, at a probation revocation hearing, to make findings of fact to support its decision. N.C. Gen. Stat. § 15A-1345(e) (2005). "[A]lthough we encourage trial courts to be 'explicit in [their] findings by stating that [they] ha[ve] considered and evaluated [the] defendant's evidence . . . and found it insufficient to justify breach of the probation condition, [a] failure to do so does not constitute an abuse of discretion.'" *State v. Belcher*, 173 N.C. App. 620, 625, 619 S.E.2d 567, 570 (2005) (quoting *State v. Williamson*, 61 N.C. App. 531, 535, 301 S.E.2d 423, 426 (1983) (alterations in original)). We will not disturb the trial court's decision to revoke probation unless there is a manifest abuse of discretion. *State v. Tennant*, 141 N.C. App. 524, 526, 540 S.E.2d 807, 808 (2000).

We apply this body of law to the defendant's contention that the evidence did not support the court's finding that he willfully violated the monetary condition of his probation. Evidence was presented that defendant paid only \$400 toward the \$35,000 owed as a condition of his probation. This evidence reasonably satisfied the court that defendant violated a condition of his probation. Defendant presented evidence of his inability to comply with this probation condition arising from the death of his grandmother and

his recent medical condition. After considering this evidence, the court, within its discretion, found that defendant violated the monetary condition of his probation willfully and without lawful excuse. Defendant has shown no manifest abuse of discretion, and we decline to disturb the trial court's finding and order revoking probation.

Having concluded there was no abuse of discretion in the trial court's decision that defendant had willfully violated his probationary sentence by failing to satisfy the monetary conditions of probation, we need not consider his remaining argument with respect to the community service condition of probation. "The breach of any single valid condition upon which the sentence was suspended will support an order activating the sentence." *State v. Braswell*, 283 N.C. 332, 337, 196 S.E.2d 185, 188 (1973).

Affirmed.

Judges ELMORE and JACKSON concur.

Report per Rule 30(e).