NO. COA05-1660

NORTH CAROLINA COURT OF APPEALS

Filed: 3 October 2006

STATE OF NORTH CAROLINA

v. Harnett County
No. 04 CRS 51117

STEPHEN KEITH CHAMPION

Appeal by defendant from judgment entered 8 September 2005 by Judge Franklin F. Lanier in Harnett County Superior Court. Heard in the Court of Appeals 11 September 2006.

Attorney General Roy Cooper, by Assistant Attorney General Nancy R. Dunn, for the State.

Terry F. Rose for defendant-appellant.

CALABRIA, Judge.

Stephen Keith Champion ("defendant") appeals from a judgment of the trial court, revoking his probation and activating his suspended sentence. We find no error.

On 5 May 2004, defendant pled guilty pursuant to a plea agreement to financial card fraud and financial identity fraud. The trial court sentenced defendant for the financial identity fraud to a minimum of ten months to a maximum of twelve months in the North Carolina Department of Corrections. The trial court also sentenced defendant for financial card fraud to a minimum of six months and a maximum of eight months, to run concurrently with the

sentence for financial identity fraud. The trial court then suspended defendant's sentences and placed him on supervised probation for thirty-six months.

Defendant's probation officer subsequently filed violation reports that alleged defendant had violated his probation by failing to report and to make his whereabouts known to his probation officer. On 8 September 2005, the trial judge held a probation violation hearing in Harnett County Superior Court. At this hearing, defendant admitted willfully violating his probation. Defendant's counsel then requested that defendant be placed on intensive probation. The State countered "we've already tried that" and requested that the trial court revoke his probation and activate his sentence. The trial court then determined defendant willfully violated the terms of his probation, revoked defendant's probation, and sentenced defendant to an active term of imprisonment in the North Carolina Department of Correction. Defendant appeals.

Defendant's sole argument on appeal is that the trial court abused its discretion by not considering placing him on intensive probation. Specifically, defendant contends that the trial court abused its discretion by relying on the prosecutor's statement that intensive probation had already been tried since there is no indication in the record that he had ever participated in intensive probation. Our Supreme Court has held, "Any violation of a valid condition of probation is sufficient to revoke defendant's probation. 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). An abuse of discretion occurs if a trial court's determination is "manifestly unsupported by reason or is so arbitrary it could not have been the result of a reasoned decision." *State v. Pendleton*, __ N.C. App. __, __, 622 S.E.2d 708, 710 (2005).

In the case *sub judice*, defendant admitted that he willfully violated the terms of his probation, and thus, it was within the trial court's discretion to revoke his probation. *See Tozzi, supra*. Moreover, "the trial court was not required to consider alternate means of punishment other than incarceration," *State v. Jones*, 78 N.C. App. 507, 510, 337 S.E.2d 195, 198 (1985), and there is nothing in the record to support a contention that the trial court would have considered alternatives to incarceration but for the prosecutor's claim that defendant had already been on intensive probation. Accordingly, defendant has failed to show an abuse of discretion, *see Stone v. Stone*, 96 N.C. App. 633, 634, 386 S.E.2d 602, 603 (1989) ("[t]he rulings . . . of the trial judge are presumed to be correct, and the burden is on the appealing party to rebut the presumption of verity on appeal"), and we find no error.

No error.

Chief Judge MARTIN and Judge JACKSON concur.

Report per Rule 30(e).