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NO. COA06-1292

NORTH CAROLINA COURT OF APPEALS

Filed: 20 March 2007

STATE OF NORTH CAROLINA

v.

BILLY RAY MANGUM, JR.

Harnett County
Nos. 05CRS56470
06CRS3851

Appeal by defendant from judgments entered 30 June 2006 by Judge Franklin F. Lanier in Harnett County Superior Court. Heard in the Court of Appeals 12 March 2007.

Attorney General Roy A. Cooper, III, by Assistant Attorney General Katherine A. Murphy, for the State.

William D. Auman for defendant-appellant.

HUNTER, Judge.

On 31 January 2006, Billy Ray Mangum, Jr. ("defendant") was convicted of possession of methadone and carrying a concealed weapon in Harnett County. The trial court sentenced defendant to five to six months imprisonment, suspended the sentence and placed defendant on eighteen months supervised probation. On 6 April 2006, defendant was convicted of breaking and entering and larceny in Wake County. The trial court sentenced defendant to six to eight months imprisonment, suspended the sentence and placed defendant on supervised probation for twenty-four months.

In June of 2006, defendant's probation officer filed separate probation violation reports alleging that defendant violated the conditions of his probation by, among other things, testing positive for cocaine and failing to report to his probation officer.

At the probation violation hearing, defendant admitted the violations, but denied willfulness. Defendant's probation officer testified that defendant tested positive for cocaine on 26 April 2006. The probation officer further testified that defendant failed to report on 24 May 2006 and that he did not see defendant until defendant was arrested for his probation violations on 6 June 2006. Defendant testified that out of the three or four drug screens he had undergone, only one screen tested positive. Defendant also stated that he missed the appointment on 24 May 2006 because he "was helping out a detective over at the Harnett County [S]heriff's [D]epartment with some information that day." The Court found defendant willfully violated the terms of his probation, revoked defendant's probation and activated his sentences.

On 30 June 2006, the trial court entered two Judgments and Commitments Upon Revocation of Probation and found that defendant willfully and without lawful excuse violated the terms and conditions of probation in each case. The trial court specifically found that defendant violated his probation in that defendant tested positive for cocaine and failed to report to his probation officer for an office visit, as alleged in paragraphs 1 and 2 in

the 5 June 2006 violation reports. Defendant appeals. After a careful review of the record and briefs, we affirm the judgments of the trial court.

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 "[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)). 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 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 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.*

Defendant argues the trial court abused its discretion when it revoked his probation because the evidence did not show that his failure to comply was willful. Defendant asserts that he had a valid reason for missing his appointment with his probation officer.

We conclude the State presented sufficient evidence to show that defendant willfully violated the conditions of his probation without lawful excuse. Here, defendant admitted the violations. Although defendant offered an explanation regarding some of the alleged violations, defendant offered no excuse for violating the condition that he not use any illegal drug. Defendant's admission, without offering any evidence to justify testing positive for cocaine, was sufficient within itself to sustain the trial court's finding that his failure to comply was without lawful excuse. See *State v. Seay*, 59 N.C. App. 667, 670-71, 298 S.E.2d 53, 55 (1982) ("[i]t is sufficient grounds to revoke the probation if only one condition is broken"), *appeal dismissed and disc. review denied*, 307 N.C. 701, 301 S.E.2d 394 (1983). 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 by using illegal drugs. Accordingly, the trial court did not err by revoking defendant's probation and activating his sentences.

Affirmed.

Chief Judge MARTIN and Judge McGEE concur.

Report per Rule 30(e).