NO. COA06-191

NORTH CAROLINA COURT OF APPEALS

Filed: 20 March 2007

STATE OF NORTH CAROLINA

v. Mecklenburg County
No. 03 CRS 220457

THOMAS OSBORNE, JR.

Appeal by Defendant from judgment entered 8 November 2005 by Judge W. Robert Bell, in Superior Court, Mecklenburg County. Heard in the Court of Appeals 6 February 2007.

Attorney General Roy Cooper, by Assistant Attorney General Olga Vysotskaya, for the State.

Haakon Thorsen, for the defendant-appellant.

WYNN, Judge.

In a probation revocation hearing, "[t]he evidence need only be such that reasonably satisfies the trial judge in the exercise of his sound discretion that the defendant has violated a valid condition on which the sentence was suspended."[1] Here, because the record shows sufficient evidence supporting the trial court's determination that Defendant willfully violated his probation, we affirm the trial court's order revoking Defendant's probation.

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[1] *State v. Belcher*, 173 N.C. App. 620, 624, 619 S.E.2d 567, 570 (2005)(citation omitted).

Defendant Thomas Osborne, Jr. was convicted of taking indecent liberties with a child in June 2004. The trial court sentenced him to a suspended term of eighteen to twenty-two months imprisonment and placed him on supervised probation for thirty-six months with special conditions including participating in a sex offender treatment program.

On 29 September 2005, a probation violation report was filed alleging that Defendant had failed to comply with the terms of his probation to (1) pay his monetary obligations; (2) notify his probation officer of a change in address; and (3) comply with sex offender treatment. Following a hearing, the trial court found that Defendant willfully violated his probation for his failure to participate in sex offender treatment, revoked Defendant's probation, and activated the suspended sentence.

Defendant appeals contending that the trial court: (I) had insufficient evidence that he willfully violated his probation and (II) made a clerical mistake in recording its judgment.

I.

Defendant first argues that the trial court erred in revoking his probation because there was insufficient evidence that he willfully violated the terms of his special probation. We disagree.

"Probation is an act of grace by the State to one convicted of a crime. It is a matter of discretion with the trial court. The matter is not governed by the rules of a criminal trial." *State v. Freeman*, 47 N.C. App. 171, 175, 266 S.E.2d 723, 725 (1980) (*citing*

State v. Duncan, 270 N.C. 241, 154 S.E.2d 53 (1967)). Hence, "[t]he evidence needs only [to] reasonably [satisfy] the trial judge in the exercise of his sound discretion that the defendant has violated a valid condition on which the sentence was suspended." *State v. Belcher*, 173 N.C. App. 620, 624, 619 S.E.2d 567, 570 (2005) (citation omitted). "The burden is on [the] 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 . . . was wilful or without lawful excuse." *State v. Tozzi*, 84 N.C. App. 517, 521, 353 S.E.2d 250, 253 (1987) (*citing State v. Crouch*, 74 N.C. App. 565, 567, 328 S.E.2d 833, 835 (1985)).

Moreover, "[t]he 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." *State v. Tennant*, 141 N.C. App. 524, 526, 540 S.E.2d 807, 808 (2000) (*quoting State v. Guffey*, 253 N.C. 43, 45, 116 S.E.2d 148, 150 (1960)). An abuse of discretion occurs when "the court's ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision." *State v. Hennis*, 323 N.C. 279, 285, 372 S.E.2d 523, 527 (1988)(*citing State v. Parker* 315 N.C. 249, 337 S.E.2d 497 (1985).

Here, Defendant challenges the trial court's finding of fact that he failed to participate in his sexual offender treatment. The terms of Defendant's special probation, required him to:

> [p]articipate in a sexual abuse treatment program approved by the supervising officer and complete the same to the full satisfaction of the treatment provider. Comply with all programs, including the polygraph examinations, to be used as a tool in conjunction with the treatment plan developed by the treatment provider. Program participation is defined as attendance at all meetings, prompt payment of fees, admission of responsibility for his/her offense and progress toward reasonable treatment goals.

Defendant contends that he received positive feedback from Sunpath Behavioral Health, the agency administering the sexual abuse treatment, because he did not receive any unsatisfactory grades in his treatment areas. Moreover, Defendant states he participated in individual treatment sessions, and that this treatment exceeded his probation requirement. Defendant acknowledges that he missed some of his group therapy on Tuesdays due to work and illness; however, he contends that he voluntarily made arrangements to attend additional individual therapy on Fridays. Defendant contends that the trial court erred when it violated the terms of his probation because he was doing more than minimum required by the terms of his probation.

The State offered evidence to show that Defendant missed several sexual abuse treatment sessions; failed to attend these sessions regularly; and was dismissed from the sexual abuse treatment program. Moreover, the trial judge received a verified report, which outlined Defendant's violations, from his probation officer. *See State v. Duncan*, 270 N.C. 241, 154 S.E.2d 53(1967) (holding that a verified report by State probation officer is competent evidence).

Although Defendant presented evidence to show that he participated in his sexual abuse treatment, the trial court had competent evidence to support its finding of fact that Defendant failed to attend his sexual abuse treatment meetings regularly and failed to comply with the program. This Court has held that, "[f]indings of fact which are supported by competent evidence are binding on appeal . . . even if there is evidence to the contrary." *State v. Darrow*, 83 N.C. App. 647, 649, 351 S.E.2d 138, 139 (1986) (citations omitted). Moreover, "[a]ny violation of a valid condition of probation is sufficient to revoke defendant's probation." *Tozzi,* 84 N.C. App. at 521, 353 S.E.2d at 253. Because there was sufficient evidence for the trial court to find that Defendant violated a condition of his probation and we can discern no abuse of the trial court's discretion in revoking Defendant's probation, Defendant's assignment of error is rejected.

II.

Defendant last argues that this case should be remanded because there were clerical mistakes in the recording of the trial court's judgment. We agree.

Defendant argues, and the State concedes, that the judgment contains two errors. The judgment states that: (1) Defendant waived his probation violation hearing and admitted to violating his probation and (2) the trial court found Defendant violated all three grounds alleged in the violation report. However, the record indicates that Defendant denied the violations, a probation hearing

took place, and the trial court only found that Defendant violated the third ground alleged in the violation report.

"It is universally recognized that a court of record has the inherent power and duty to make its records speak the truth." *State v. Linemann*, 135 N.C. App. 734, 738, 522 S.E.2d 781, 784 (1999). (citing *State v. Cannon*, 244 N.C. 399, 403, 94 S.E.2d 339, 342 (1956)). Accordingly, we remand this matter for the correction of the clerical errors to show that (1) "a hearing was held before the Court and, by the evidence presented, the Court is reasonably satisfied in its discretion that the defendant violated each of the conditions of the defendant's probation as set forth. . . ." (AOC-CR-607; R. p. 19) and (2) Defendant violated paragraph 3 in the Violation Report filed 29 September 2005.

Affirmed in part and remanded in part for corrections.

Judges STEELMAN and JACKSON concur.

Report per Rule 30(e).