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NO. COA06-207

NORTH CAROLINA COURT OF APPEALS

Filed: 3 October 2006

STATE OF NORTH CAROLINA

v.

Guilford County
No. 04 CRS 85958

DESHON MANUEL

Appeal by defendant from judgment entered 18 October 2005 by Judge Catherine C. Eagles in Guilford County Superior Court. Heard in the Court of Appeals 2 October 2006.

Attorney General Roy Cooper, by Assistant Attorney General John W. Mann, for the State.

James N. Freeman, Jr., for defendant-appellant.

TYSON, Judge.

Deshon Manuel ("defendant") appeals from judgment entered revoking his probation and activating his suspended sentence. We affirm.

I. Background

Although the underlying judgment is not included in the record on appeal, it appears from other documents before us that defendant pled guilty to possession of cocaine in October 2004. Defendant received a suspended prison sentence of eight to ten months and was placed on supervised probation.

On 15 June 2005 after being released from prison on an

unrelated charge, defendant began intensive probationary supervision. Defendant's probation officer, Angela Williams ("Officer Williams"), met with defendant shortly after his release from prison and provided the conditions of defendant's probation, including: (1) completing community service; (2) appearing at scheduled visits with his probation officer; (3) paying court costs; and (4) providing proof of obtaining or retaining employment.

On 29 August 2005, Officer Williams filed a probation violation report and addendum alleging defendant violated the conditions of his probation by failing to, *inter alia*: (1) complete his community service requirements; (2) appear at scheduled visits with his probation officer; (3) be at his residence during curfew hours; (4) pay court costs; and (5) provide proof of obtaining or retaining employment.

At a probation hearing held on 18 October 2005, the State informed the trial court that it was proceeding only on violations 1, 2, 4, and 5, as set out above. The trial court asked defense counsel whether defendant admitted wilfully violating his probation without lawful excuse with respect to allegations 1, 2, 4, and 5, as alleged in the violation report. Defense counsel responded, "[h]e admits the violations and that they are without lawful excuse."

Officer Williams testified at the hearing that she recommended defendant's probation be revoked. Thereafter, defense counsel represented to the trial court that defendant was unable to fulfill

his community service requirements and attend visits with his probation officer because of problems with his mother and difficulties obtaining transportation. Defense counsel also explained that defendant was unable to show proof of obtaining employment because he was "working under the table" at a janitorial service and the company had refused to write him a letter verifying his employment. Defense counsel represented to the court that defendant's family would assist defendant in paying off his monetary obligations and argued that defendant's probation should continue.

The trial court found defendant had wilfully violated conditions of his probation without lawful excuse. The trial court revoked defendant's probation and activated his suspended sentence. Defendant appeals.

II. Issues

Defendant argues: (1) insufficient evidence was presented that his failure to comply with the conditions of probation were wilful or without lawful excuse and (2) the trial court erred by failing to make sufficient findings of fact showing it considered his purported evidence that his probation violations were not wilful, as required by N.C. Gen. Stat. § 15A-1345(e).

III. Revocation Hearing

Defendant argues he purportedly offered competent evidence that he was unable to comply with the conditions immediately after his release from prison. We disagree.

"[E]vidence at a probation revocation hearing need 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." *State v. Tozzi*, 84 N.C. App. 517, 520-21, 353 S.E.2d 250, 252-53 (1987) (quotation omitted). Once the State presented evidence that defendant had violated conditions of his probation, the burden shifted to defendant to present competent evidence of his inability to comply with the conditions. *Id.* at 521, 353 S.E.2d at 253.

In a proceeding to revoke probation, if a defendant fails to offer evidence of his inability to comply, evidence "establishing his non-compliance is sufficient to justify a finding that the failure was wilful or without lawful excuse." *State v. Bryant*, 73 N.C. App. 647, 648, 326 S.E.2d 910, 911 (1985). Here, defendant, through counsel, admitted that he violated four conditions of his probation *without lawful excuse*. This admission alone is sufficient to support the trial court's finding that defendant violated conditions of his probation without lawful excuse.

Defendant argues he presented evidence showing his violations were not wilful. Defendant did not present any evidence at the probation violation hearing. Defendant's alleged inability to comply with the conditions of his probation was relayed to the Court through the statements of his counsel at the hearing.

We have previously held that defense counsel's statements in a probation revocation hearing are not competent evidence. *State v. Crouch*, 74 N.C. App. 565, 567, 328 S.E.2d 833, 835 (1985) ("Our review of representative cases discloses no circumstances where

statements of counsel have been treated as evidence, while the cases repeatedly state that the findings and conclusions of the trial court in such hearings must be based on competent evidence.”) This Court explicitly stated it was aware that formal rules of evidence do not apply at revocation hearings. *Id.* Defendant admitted he violated four conditions of his probation without lawful excuse and failed to present any competent evidence of his inability to comply with the conditions of his probation. We hold the trial court did not abuse its discretion in revoking defendant’s probation.

IV. Findings of Fact

Defendant contends the trial court erred by failing to make sufficient findings of fact showing it considered his purported evidence that his probation violations were not wilful, as required by N.C. Gen. Stat. § 15A-1345(e). N.C. Gen. Stat. § 15A-1345(e) (2005) requires the trial court to make findings to support its decision to revoke a defendant’s probation. The written judgment contains express findings of fact showing it considered defendant’s “evidence” and arguments:

After considering the record . . . together with the evidence presented by the parties and the statements made on behalf of the State and the defendant, the Court finds . . . the condition(s) violated and the facts of each violation are as set forth in paragraph(s) 1, 2, 4, 5 in the Violation Report or Notice dated 08/25/2005.

. . . .

Each violation is, in and of itself, a sufficient basis upon which this Court should revoke probation and activate the suspended

sentence.

These findings of fact are sufficient to support the trial court's conclusion to revoke defendant's probation and activate his suspended sentence. This assignment of error is overruled.

V. Conclusion

The trial court made sufficient findings of fact to support its conclusion to revoke defendant's probation and activate his suspended sentence. Defendant failed to show the trial court abused its discretion revoking his probation. The trial court's judgment is affirmed.

Affirmed.

Judges BRYANT and LEVINSON concur.

Report per Rule 30(e).