NO. COA06-496

NORTH CAROLINA COURT OF APPEALS

Filed: 6 March 2007

STATE OF NORTH CAROLINA

v.

KARL LAMONT MARK,
Defendant.

Guilford County
Nos. 01 CRS 105410
01 CRS 105414
01 CRS 105416

Appeal by defendant from judgments entered 16 November 2005 by Judge Lindsay R. Davis, Jr., in Superior Court, Guilford County. Heard in the Court of Appeals 19 February 2007.

Attorney General Roy Cooper, by Assistant Attorney General Newton G. Pritchett, Jr., for the State.

Mercedes O. Chut, for defendant-appellant.

WYNN, Judge.

Defendant appeals from three judgments entered upon revocation of his probation in 01 CRS 105410, 105414, and 105416. For the reasons discussed below, we dismiss Defendant's appeal in 01 CRS 105410 and 01 CRS 105416, and affirm the trial court's judgment in 01 CRS 105414.

Based upon the limited materials of record, it appears Defendant Karl Lamont Mark pled guilty on 27 February 2003 to at least thirteen counts of breaking and entering a motor vehicle and three counts of misdemeanor larceny in 01 CRS 105407-17, 103667,

and 103669. Judge Henry E. Frye, Jr., consolidated these offenses into three judgments, designated by file numbers 01 CRS 105410, 105414, and 105416, and imposed three consecutive suspended sentences of six to eight months' imprisonment. Judge Frye placed Defendant on sixty months of supervised probation in each of the three judgments.

In three reports filed 15 July 2005, Defendant's probation supervisor charged him with violating the terms and conditions of his probation. The report filed in 01 CRS 105410 alleged the following six violations by Defendant: (1) testing positive for marijuana use on three occasions; (2) failing to report to the probation office as directed on four occasions; (3) failing to satisfy the monetary conditions of his probation; (4) refusing to submit to a drug screen on one occasion; (5) admitting to marijuana use on one occasion; and, (6) failing to be present at his residence during home visits attempted by his probation officer since March 2005. The reports filed in 01 CRS 105414 and 105416 also charged Defendant with the five violations alleged in paragraphs (1), (2), (4), (5), and (6) of the report in 01 CRS 105410, but did not include the allegation in paragraph (3) of non-compliance with the monetary conditions of probation.

At a hearing on 16 November 2005, Marquita Mizell, Defendant's probation officer, described his several violations. Specifically, she averred that Defendant tested positive for marijuana use on 1 November 2004, 21 February 2005, and 14 March 2005. Although he denied usage on 1 November 2004 and 14 March 2005, he admitted

using marijuana to Mizell on 21 February 2005. Defendant also admitted marijuana use during an office visit on 13 September 2004. Defendant refused to submit to a drug screen on 18 October 2004. He arrived late for the appointment and advised Mizell that he was unable to produce a urine sample. Defendant then declined to remain in the office until he could provide a sample, claiming that he had to take his children to day care.

Mizell recounted Defendant's unexcused failure to report to her office as scheduled on 4 October 2004, 3 January 2005, 12 April 2005, and 6 June 2005. Although he missed additional appointments when working late or taking his girlfriend to the hospital, Mizell did not count them as violations. Defendant made no payments toward his monetary obligation after 14 March 2005, leaving an unpaid balance of $261.51. Finally, Defendant ceased reporting to Mizell's office in March 2005, and was not found at his reported residence when she attempted to conduct home visits in May and June 2005. Mizell left her contact information at the residence but did not hear from Defendant.

In his testimony, Defendant attributed his positive marijuana tests to secondhand exposure at his cousin's house. He claimed to have falsely admitted smoking marijuana to Mizell on 13 September 2004, after she threatened to "put [him] in some classes" if he denied usage. Defendant missed "two or three visits" with Mizell due to conferences with his child's teacher but was "not even sure" of the missed visit on 3 January 2005. He missed his visit with Mizell on 12 April 2005 because he misplaced his paperwork and was

unable to get in touch with Mizell to reschedule his appointments. Furthermore, the phone number he provided to Mizell "had changed." Defendant refused his drug screen on 18 October 2004 because he was unwilling to miss a court date. He did not receive the notes left by Mizell at his cousin's house because "[h]alf the time [he] was not there," and his cousin failed to convey the messages. Defendant ceased reporting to Mizell's office in March 2005 "because [he] was trying to find a place to stay." Defendant explained to the court that "a lot of things were going on" that were out of his control.

The hearing judge announced his findings and judgment in open court as follows:

> The Court in the exercise of its discretion in considering the evidence presented . . . finds that the defendant in 01 CRS 105410 has violated the terms and conditions of probation[] as related to paragraphs 1, 2, 4, 5, and 6; in 01 CRS 105414 as alleged in paragraphs 1 through 5; and in 01 CRS 105416 as alleged in paragraphs 1 through 4,[1] and each of those violations w[as] willful.
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> . . . [Defendant's] suspended sentences are revoked. Judge Frye sentenced him to consecutive sentences and I do not disturb that. They will be consecutive. . . .

Defendant filed timely notice of appeal, but before turning to the merits of his appeal, we note that Defendant failed to include in the record on appeal the judgments entered by the trial court in 01 CRS 105410 and 01 CRS 105416. Under N.C. R. App. P. 9(a)(3)(g),

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[1] The court appears to have overlooked paragraph (5) on the back page of the violation report in 01 CRS 105416, inasmuch as this charge is identical to paragraph (6) of the report filed in 01 CRS 105410 and paragraph (5) of the report in 01 CRS 105414.

the record of appeal must include a copy "of the judgment, order, or other determination from which appeal is taken." As appellant in this cause, Defendant bore the responsibility of assembling a proper record to support his appeal. *State v. Marshall*, 11 N.C. App. 200, 201, 180 S.E.2d 464, 465 (1971). "A judgment is a necessary part of the record. . . . When a necessary part of the record has been omitted, the appeal will be dismissed." *State v. Harvell*, 45 N.C. App. 243, 246, 262 S.E.2d 850, 852, *disc. rev. denied and appeal dismissed*, 300 N.C. 200, 269 S.E.2d 626 (1980); *see also State v. Norton*, 27 N.C. App. 248, 249, 218 S.E.2d 479, 480 (1975). Accordingly, we must dismiss Defendant's appeals in 01 CRS 105410 and 01 CRS 105416.

Regarding the remaining judgment, which Defendant did include in the record on appeal, Defendant argues that the trial court erred in revoking probation without entering "findings of fact showing the basis for the violation of probation." He contends the judgment entered in 01 CRS 105414 does not specify which of the three violation reports was incorporated by reference into the court's findings. Because "[i]t would have been a simple matter for the Court definitively to specify which Violation Report it chose to incorporate," Defendant asserts that the ambiguity found in the judgment should be deemed reversible error.

We find no merit to Defendant's claim. Each of the three violation reports filed by Mizell plainly identifies the case number to which it pertains, to wit: (1) 01 CRS 105410; (2) 01 CRS 105414; and, (3) 01 CRS 105416. The judgment in 01 CRS 105414

reflects the trial court's findings that Defendant violated the conditions of probation as alleged in paragraphs (1)-(5) of the violation report filed in the cause on 30 June 2005.[2] Inasmuch as the record includes only one violation report filed in 01 CRS 105414, and the report contains five alleged violations numbered (1)-(5), there is no ambiguity in the findings of fact entered by the court in support of its judgment. Moreover, the court's findings are sufficient to support revocation. *See State v. Henderson*, ___ N.C. App. ___, ___, 632 S.E.2d 818, 822 (2006); *see also State v. Williamson*, 61 N.C. App. 531, 535, 301 S.E.2d 423, 426 (1983).

Defendant next contends the State's evidence was insufficient to establish the willfulness of his alleged probation violations. To support the trial court's decision to revoke a defendant's probation, "[a]ll that is required is that the evidence be sufficient to reasonably satisfy the judge in the exercise of his sound discretion that the Defendant has willfully violated a valid condition of probation." *State v. White*, 129 N.C. App. 52, 58, 496 S.E.2d 842, 846 (1998) (citation omitted), *aff'd in part, review dismissed in part*, 350 N.C. 302, 512 S.E.2d 424 (1999). "Further, a proceeding to revoke probation is not bound by strict rules of evidence and an alleged violation of a probationary condition need not be proven beyond a reasonable doubt." *State v. Hill*, 132 N.C.

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[2] The report lists 30 June 2005 as the date of its administrative review by the Chief Probation Officer. However, the report was filed in Guilford County Superior Court on 15 July 2005.

App. 209, 211, 510 S.E.2d 413, 414 (1999) (citation omitted). The violation of even a single condition of probation provides sufficient grounds for revocation. *See, e.g.*, *State v. Braswell*, 283 N.C. 332, 337, 196 S.E.2d 185, 188 (1973).

In challenging the sufficiency of the State's evidence, Defendant points to his own testimony regarding his unstable housing and employment, his difficulties with child care, and his unsuccessful attempts to contact Mizell. However, Defendant fails to address the State's evidence that he twice admitted marijuana use to Mizell and that he tested positive for marijuana use on three occasions. Such evidence is sufficient to show a willful violation of the condition of his probation forbidding the use of controlled substances. The trial court expressly found that each of Defendant's violations was "in and of itself, a sufficient basis upon which this Court should revoke probation and activate the suspended sentence." Therefore, Defendant cannot establish prejudicial error on appeal based on the supposed lack of evidence on any of his remaining violations. *See id.* at 337, 196 S.E.2d at 188; N.C. Gen. Stat. § 15A-1443(a) (2005).

The record on appeal includes additional assignments of error not addressed by Defendant in his brief to this Court. Pursuant to N.C. R. App. P. 28(b)(6), we deem them abandoned.

Appeal dismissed in 01 CRS 105410 and 01 CRS 105416;

Affirmed in 01 CRS 105414.

Judges ELMORE and GEER concur.

Report per Rule 30(e).