NO. COA06-702

NORTH CAROLINA COURT OF APPEALS

Filed: 1 May 2007

STATE OF NORTH CAROLINA

v. Alamance County
No. 03 CRS 61815

ANDREW J. ROYSTER,
Defendant.

Appeal by defendant from judgment entered 9 February 2006 by Judge Narley L. Cashwell in Alamance County Superior Court. Heard in the Court of Appeals 16 April 2007.

Attorney General Roy Cooper, by Assistant Attorney General J. Philip Allen, for the State.

Russell J. Hollers III for defendant-appellant.

GEER, Judge.

Defendant Andrew J. Royster appeals from a judgment revoking his probation and activating his suspended sentence. His sole argument on appeal is that the trial court erred in finding that he "willfully" violated a valid condition of his probation. Based on our review of the record, we find sufficient evidence to support the trial judge's findings and affirm.

On 22 April 2004, defendant was sentenced to 15 to 18 months imprisonment for habitual misdemeanor assault. The trial court

suspended the sentence, placed defendant on supervised probation for 24 months, and imposed a special condition of probation requiring defendant to enroll in and complete a domestic violence program.

On 5 January 2006, Probation Officer Dawn L. Baughman filed a probation violation report, alleging that defendant had violated the conditions of his probation by, among other things, failing to report to his probation officer on four occasions and failing to enroll in and complete the domestic violence program. A hearing was held on 9 February 2006, at which Officer Baughman testified regarding the four scheduled appointments that defendant missed. Officer Baughman did not know the reason why defendant failed to report for two of the missed visits. With respect to the other visits, the officer testified that defendant informed her he had either forgotten or overlooked the appointments.

Officer Baughman further testified that defendant never enrolled in the domestic violence program as ordered by the sentencing court. She testified that she had discussed with defendant his failure to enroll in and complete the program, and he informed her that he was enrolled in an anger management class. Officer Baughman then stressed to defendant that his participation in anger management classes was not a substitute for the domestic violence program and that his failure to enroll would be a violation of his probation.

At the hearing, defendant admitted he violated each of the conditions of his probation as set forth in the violation report,

but denied the violations were willful. Regarding his failure to report for the scheduled meetings, defendant testified that he suffered from gout, and he missed the meetings because he could not get his swollen foot into a shoe. He also testified that he contacted his probation officer and rescheduled the missed meetings. With respect to his failure to enroll in a domestic violence program, defendant claimed he was mistakenly led to believe that his anger management classes were an acceptable substitute for the court-ordered program. Defendant also sought to excuse his failure to enroll in the domestic violence program by testifying that the program would cost $490.00 and take 12 months to complete. According to defendant, when he learned this information, he had less than 12 months remaining on his probation, and, therefore, could not complete the program before his probation ended. On cross-examination, defendant admitted that Officer Baughman had informed him at their first meeting that he would be required to complete the domestic violence program.

At the end of the hearing, the court found that Officer Baughman "is completely credible, and that [defendant] is not worthy of belief," and concluded that defendant willfully and without lawful excuse violated the terms of his probation by failing to report to his probation officer on four occasions and by failing to enroll in and complete the domestic violence program. The trial court then revoked defendant's probation and activated his suspended sentence.

In his sole argument on appeal, defendant contends the court below abused its discretion in finding defendant's probation violations were willful. As this Court has held:

> 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. The burden is on 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) (internal citations omitted). Although defendant attempted to meet his burden by presenting evidence of his inability to comply with the conditions of his probation, "'[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)).

Defendant first argues that the trial court abused its discretion in finding that he willfully failed to attend his scheduled appointments. In his brief, he does not explain how he was unable to comply with this condition of his probation, but rather suggests that a failure to attend four of the required appointments cannot be "a sufficient basis, on its own, for activating the suspended sentence." Defendant cites no authority for this proposition. In fact, the contrary is well-established:

"*Any* 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 (emphasis added). Accordingly, the trial court did not abuse its discretion in finding that defendant willfully failed to attend some of his required meetings.

Defendant next contends that the trial court abused its discretion in finding that he willfully failed to complete the domestic violence program when he was not aware until too late that anger management classes were not a substitute for the prescribed program. Defendant's argument mistakenly assumes that the burden was on the probation officer to remind defendant that a failure to complete the specifically-ordered domestic violence program could result in the revocation of his probation.

In any event, there was ample evidence at the hearing that the probation officer did indeed remind defendant that he needed to complete the domestic violence program, that anger management classes were not a substitute, and that failure to comply would constitute a violation of his probation. Accordingly, the trial court did not abuse its discretion in finding that defendant willfully failed to enroll in and complete the court-ordered domestic violence program.

Since the court did not unreasonably determine that defendant violated at least one valid condition of his probation, we affirm the trial court's revocation of defendant's probation and the activation of his suspended sentence.

Affirmed.

Judges WYNN and ELMORE concur.

Report per Rule 30(e).