NO. COA06-98

NORTH CAROLINA COURT OF APPEALS

Filed: 7 November 2006

STATE OF NORTH CAROLINA

v. Mecklenburg County
No. 03 CRS 235797

PAUL WILLIAM MARION

Appeal by defendant from judgment entered 20 September 2005 by Judge Yvonne Mims Evans in Mecklenburg County Superior Court. Heard in the Court of Appeals 2 October 2006.

Attorney General Roy A. Cooper, III, by Assistant Attorney General P. Bly Hall, for the State.

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

JACKSON, Judge.

On 6 December 2004, Paul Marion ("defendant") was convicted of common law robbery. The trial court imposed an intermediate punishment, suspending his sentence and placing him on supervised probation for three years.

A violation report filed 21 June 2005 charged defendant with the following willful probation violations: (1) failing to report to his probation officer at any time; (2) non-payment of court costs; (3) non-payment of his monthly supervision fees; (4) providing a fictitious address to his probation officer; and (5)

absconding supervision.

At the outset of the probation hearing held 20 September 2005, defendant tendered his admission to the five charges in the violation report. His probation officer, Audrey Pride, informed the court that she was assigned defendant's case in 2004, went to his supposed address, and discovered that it did not exist. After swearing out a warrant for defendant's arrest, she was notified by his mother that he had been taken into custody. When defendant finally reported to Pride's office after his release from jail, he tested positive for marijuana use. He then failed to report to his next scheduled visit and did not call her. Pride noted that defendant knew where her office was located and had been given her phone number. Summarizing defendant's performance on probation, she told the court that "he's paid no monies, he's done nothing."

Defendant's counsel asked the court to consider continuing defendant on probation with ninety days of electronic house arrest. While "not discounting or excusing his lack of communication" with Pride, counsel stated that defendant had gone to her office and attempted to meet with her, but left before getting to see her. Counsel further claimed that defendant made some efforts to maintain communication with Pride but "had difficulty with where he was residing[.]" He averred that this was defendant's "first violation[,]" and that defendant was now "ready to start, hopefully getting employment that's more steady, making a payment plan, and complying with the residential wishes of his probation officer."

Defendant also addressed the court, claiming that he had not

been assigned a probation officer until February of 2005. When he tried to visit Pride at her office, he waited for her for an hour before leaving in order to report to his job. A clerk was unable to provide defendant with a phone number to contact Pride when she was not in her office. He first met Pride when she visited him in jail after being contacted by his mother. Defendant gave Pride his correct address. He denied previously giving a fictitious address, suggesting that it "must have been misprinted in the computer[.]" Defendant admitted he failed to attend the subsequent appointment scheduled with Pride but explained that he had to take his mother to the hospital. Upon inquiry from the court, defendant said he had seen Pride just twice in the ten months since he entered his guilty plea. When asked if he had paid the $150.00 arrearage alleged on the violation report, he noted that Pride had arranged a payment plan with him after she filed the violation report. His first payment under the plan was due on 31 August 2005. Asked if he made the payment, defendant replied that he did not have the entire amount, because he lost his full-time job and had been working for a temp agency. When asked by the court if he had paid "some of the money" on 31 August 2005, defendant offered to pay it "today."

In revoking defendant's probation, the trial court found that he had willfully violated the conditions of his probation as alleged in paragraphs (1) through (5) of the violation report. It further found that each individual violation was sufficient to support revocation. Defendant appeals from the judgment revoking

his probation and activating his suspended sentence of fifteen to eighteen months' imprisonment. Finding no error, we affirm.

On appeal, defendant claims the trial court erred in revoking his probation, absent sufficient evidence to prove that he violated the conditions of his probation willfully and without lawful excuse. We disagree.

In order 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), *aff'd in part and disc. review dismissed in part*, 350 N.C. 302, 512 S.E.2d 424 (1999). "[O]nce the State has presented competent evidence establishing a defendant's failure to comply with the terms of probation, the burden is on the defendant to demonstrate through competent evidence an inability to comply with the terms." *State v. Terry*, 149 N.C. App. 434, 437-38, 562 S.E.2d 537, 540 (2002) (citation omitted). "If the trial court is then reasonably satisfied that the defendant has violated a condition upon which a prior sentence was suspended, it may within its sound discretion revoke the probation." *Id.* at 438, 562 S.E.2d at 540 (citation omitted).

Here, defendant admitted each of the violations alleged in the violation report. His counsel asked the court to continue defendant on probation, on the ground that it was his "first violation." Only after his probation officer recommended

revocation did defendant attempt to deny and explain his violations. Moreover, he did not adduce any competent evidence at the hearing, relying instead on his own unsworn assertions to the trial court. *Cf. State v. Crouch*, 74 N.C. App. 565, 567, 328 S.E.2d 833, 835 (1985) (Court held "that counsel's statements were not competent evidence, and that the trial court was not, therefore, under a duty to make specific findings with respect to defendant's alleged inability to comply."). Defendant did not testify under oath or submit to cross-examination. Because he admitted the charged violations and offered no evidence, we conclude the violation report filed by Pride was sufficient evidence to support the trial court's findings. *See White*, 129 N.C. App. at 58, 496 S.E.2d at 846; *see also State v. Dement*, 42 N.C. App. 254, 255, 255 S.E.2d 793, 794 (1979) ("Sufficient evidence was presented in the verified and uncontradicted violation report served upon the defendant to support the trial court's findings and conclusions.").

Defendant also contends that the trial court failed to make sufficient findings of fact to reflect its consideration of his evidence that his violations were not willful. We again find no merit to this claim. As noted above, defendant presented no competent evidence at the revocation hearing. *See Crouch*, 74 N.C. App. at 567, 328 S.E.2d at 835. Rather, he admitted the allegations in the violation report, which includes the allegation that he "willfully violated" the conditions of his probation as detailed therein. We note that the trial court's judgment includes

findings that defendant violated the conditions of probation as alleged in the report, and that "the defendant violated each condition willfully and without valid excuse[.]" The judgment further provides that the trial court considered the evidence and arguments of the parties. *See id.* at 568, 328 S.E.2d at 835. Such findings are sufficient to support revocation of defendant's probation and the activation of his suspended sentence. *See State v. Williamson*, 61 N.C. App. 531, 535, 301 S.E.2d 423, 426 (1983).

Affirmed.

Chief Judge MARTIN and Judge CALABRIA concur.

Report per Rule 30(e).