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NO. COA08-303

NORTH CAROLINA COURT OF APPEALS

Filed: 16 December 2008

STATE OF NORTH CAROLINA

v.

YVONNE LORRAINE BREWER,
Defendant.

Buncombe County
Nos. 04 CRS 52140
04 CRS 8963-65
04 CRS 8966-68
04 CRS 8969-71
04 CRS 8973-74
04 CRS 8975-76
04 CRS 8977-78
04 CRS 8983

Court of Appeals

Appeal by defendant from judgments entered 26 July 2007 by Judge James U. Downs in Buncombe County Superior Court. Heard in the Court of Appeals 17 November 2008.

Slip Opinion

Attorney General Roy Cooper, by Assistant Attorney General Ann Stone, for the State.

Michael E. Casterline for defendant-appellant.

GEER, Judge.

Defendant Yvonne Lorraine Brewer appeals from 26 July 2007 judgments revoking her probation and activating seven consecutive eight to 10-month sentences on embezzlement charges. The issue before this Court is whether the record contains sufficient evidence to support the trial court's finding that defendant's violation of the monetary condition of her probation was willful. We hold that the evidence presented at the hearing was sufficient.

Facts

On 17 December 2004, defendant pled guilty to multiple charges of embezzlement. Pursuant to a plea arrangement, the charges were consolidated into several judgments for sentencing. Defendant was sentenced to an active term of eight to 10 months imprisonment for one of the consolidated judgments and received consecutive suspended sentences of eight to 10 months each for the remaining seven consolidated judgments. Defendant was also placed on probation for a term of 60 months, which she was to begin serving upon her release from incarceration. Finally, defendant was ordered to pay \$70,000.00 in restitution. She paid \$10,000.00 towards that amount at sentencing.

On 6 June 2007, a probation violation report was filed, alleging that defendant had willfully violated a monetary condition of probation by being in arrears in the amount of \$3,590.00. On 26 July 2007, the trial court conducted a probation revocation hearing, at which time defendant denied the violations. At the hearing, defendant's probation officer testified that defendant was supposed to pay \$835.00 per month. Since being released from custody on 9 January 2007, defendant had only paid \$725.00 in total. A balance of \$58,565.57 remained due on the ordered restitution.

Defendant also testified at the hearing, reporting that she and her husband were two months behind on their house payments. She stated that her husband had sold all of his tools and his motorcycle to try to get caught up on the house payments and payments to the court. Defendant further testified that she has

diabetes and high blood pressure for which she needs medication. Defendant testified that their monthly household expenses, not including her medications or the restitution ordered in these cases, were \$188.00 more than their average monthly income of \$2,080.00. On cross-examination, defendant admitted that she was not required to pay the majority of a prior restitution order resulting from embezzlement because the probation officer had let the case expire.

Following the hearing, the trial court found that defendant, at the time of sentencing, owed \$60,000.00 to the victims in these cases, that she had paid little of the debt owed, and that her failure to do so was willful, substantial, and intentional. The trial court revoked defendant's probation and activated the seven consecutive eight to 10-month sentences.

Discussion

On appeal, defendant contends there was insufficient evidence to support the trial court's finding that her violation of the monetary condition of her probation was willful. Defendant argues that once she offered evidence that she was without the means to make payments, the trial court was obligated to consider and evaluate this evidence before revoking her probation, but failed to do so.

To revoke a defendant's probation, the trial court need only find that the defendant has "willfully violated a valid condition of probation or that the defendant has violated without lawful excuse a valid condition upon which the sentence was suspended."

State v. Hewett, 270 N.C. 348, 353, 154 S.E.2d 476, 480 (1967). "Additionally, once 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). "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.

Here, the trial court heard testimony and received evidence concerning defendant's earnings and expenses. At the conclusion of the hearing, defense counsel and the trial court had the following exchange:

MR. YOUNG: Can I ask that the document I passed up be put in the record if you're not finding any reasonable expenses on her ability pay [sic] in this case?

THE COURT: I made my findings.

MR. YOUNG: I understand that, sir.

THE COURT: And your document is in the record.

This exchange reveals that the trial court did not fail to consider defendant's evidence; the court simply found it unpersuasive. The breach of any one condition of probation is a sufficient ground to revoke probation and the evidence here showed that defendant violated the condition requiring restitution payments.

Accordingly, the judgments revoking defendant's probation and activating the suspended sentences are affirmed.

Affirmed.

Judge ELMORE concurs.

Judge WYNN concurs in the result only.

Report per Rule 30(e).