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NO. COA08-317

NORTH CAROLINA COURT OF APPEALS

Filed: 21 October 2008

STATE OF NORTH CAROLINA

v.

Mecklenburg County  
No. 05 CRS 255156

CHARLES NORWOOD

Appeal by defendant from judgment entered 18 October 2007 by Judge David S. Cayer in Superior Court, Mecklenburg County. Heard in the Court of Appeals 06 October 2008.

*Attorney General Roy Cooper, by Assistant Attorney General Juanita B. Twyford, for the State.  
Peter Wood for defendant-appellant.*

WYNN, Judge.

To revoke a defendant's probation, the evidence must "reasonably satisfy the judge in the exercise of his sound discretion 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."<sup>1</sup> Here, because the record contains sufficient evidence that Defendant Charles Norwood willfully violated a valid condition

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<sup>1</sup>*State v. Hewett*, 270 N.C. 348, 353, 154 S.E.2d 476, 480 (1967).

of his probation, we affirm the trial court's judgment revoking Defendant's probation.

On 11 August 2006, Defendant pled guilty to possession of a firearm by a felon. The trial court sentenced Defendant to twelve to fifteen months' imprisonment, but suspended the sentence and placed Defendant on thirty-six months supervised probation, including six months of intensive supervision to be served upon release from custody on an unrelated criminal matter.

On 19 December 2006, a probation violation report was entered alleging that Defendant violated six conditions of his probation. After holding a hearing, the trial court found Defendant had willfully violated his probation. The trial court modified Defendant's probation on 31 January 2007 by ordering him to complete the TASC substance abuse program, to pay his monetary obligations pursuant to a schedule set by the court, and to serve a thirty-two day active sentence.

In April 2007, Defendant's probation officer filed a violation report alleging that Defendant had violated the conditions of his probation by: (1) failing to report for scheduled office visits on 27 February, 6 March, 14 March, 20 March and 3 April 2007; (2) being terminated from TASC; (3) missing curfew; and (4) testing positive for cocaine. Defendant's probation officer filed probation violation addendums on 23 August 2007 alleging further violations.

Before Defendant's probation violation hearing, the State agreed to dismiss the probation violation addendums filed in August

2007. At the hearing, Defendant's probation officer, Pondy Perry, testified that Defendant was supposed to meet with her every Tuesday between 2:00 and 5:00 P.M., and that he had missed several scheduled office visits. Officer Perry further testified that Defendant had a negative curfew check on 19 February 2007 and 7, 11, and 26 March 2007, that he had a positive drug test for cocaine on 2 April 2007, and that he had been terminated from the TASC program for non-compliance. Defendant denied each of the violations.

Defendant testified that he had difficulty meeting with his probation officer because of his work schedule, the public bus schedules and his probation officer's unwillingness to accommodate him. He further testified that he missed his scheduled 3 April 2007 visit because he was seeking medical attention for a work-related eye injury. Defendant stated that he did not complete the TASC program because he did not have the requisite funds for the treatment and that he missed his curfew because of his work schedule. Finally, Defendant admitted that he used cocaine leading up to 2 April 2007, that he tested positive, and that he was aware that using cocaine was in violation of his probation.

After hearing testimony from Defendant and his probation officer, the trial court found that Defendant had willfully failed to comply with his probation by testing positive for cocaine, missing curfew and being terminated from TASC. However, the trial court found that Defendant's failure to attend his scheduled office visit on 3 April 2007 was not willful. By judgment entered 18

October 2007, the trial court found that Defendant willfully and without lawful excuse violated all four conditions of probation, revoked Defendant's probation and activated Defendant's original sentence.

On appeal, Defendant contends the trial court abused its discretion by concluding that he willfully violated a condition of his probation without lawful excuse and by revoking his probation. We disagree.

"[P]robation or suspension of sentence is an act of grace and not a right." *State v. Alston*, 139 N.C. App. 787, 794, 534 S.E.2d 666, 670 (2000) (quotation and citation omitted). All that is required in a hearing to revoke probation is that the evidence "reasonably satisfy the judge in the exercise of his sound discretion 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). A verified probation violation report is competent evidence sufficient to support revocation of probation. *State v. Gamble*, 50 N.C. App. 658, 661, 274 S.E.2d 874, 876 (1981). Once the State meets its burden, the burden then shifts to the 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 willful or without lawful excuse." *State v. Tozzi*, 84 N.C. App. 517, 521, 353 S.E.2d 250, 253

(1987). "Any violation of a valid condition of probation is sufficient to revoke [a] defendant's probation." *Id.*

We find neither error nor abuse of discretion in the trial court's revocation of Defendant's probation or the activation of his sentence. The trial court previously found Defendant in violation of terms of probation and had modified the terms of probation in January 2007. It is undisputed that after his probation was modified, Defendant violated the terms of his probation again by testing positive for cocaine. In fact, Defendant admitted using cocaine, having a positive drug test and violating the terms of his probation based upon his positive drug test. See *State v. Seay*, 59 N.C. App. 667, 670-71, 298 S.E.2d 53, 55 (1982), *disc. review denied*, 307 N.C. 701, 301 S.E.2d 394 (1983) (breach of any one condition is sufficient grounds to revoke probation). Accordingly, we affirm the trial court's judgment revoking Defendant's probation.

Affirmed.

Judges ELMORE and GEER concur.

Report per Rule 30(e).