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NO. COA08-462

NORTH CAROLINA COURT OF APPEALS

Filed: 17 February 2009

STATE OF NORTH CAROLINA

v.

JAMIE GRAHAM,  
Defendant.

Scotland County  
Nos. 05 CRS 50577  
05 CRS 50578

Appeal by defendant from judgments entered 6 November 2007 by Judge Richard T. Brown in Scotland County Superior Court. Heard in the Court of Appeals 12 January 2009.

*Attorney General Roy Cooper, by Assistant Attorney General Lisa Harper, for the State.  
Bryan Gates for defendant-appellant.*

GEER, Judge.

Defendant Jamie Graham appeals from judgments entered upon revocation of probation. For the following reasons, we affirm.

On 30 March 2005, defendant pled guilty to two counts of breaking and entering of a motor vehicle and one count of misdemeanor larceny. The trial court sentenced defendant to two consecutive six to eight month terms of imprisonment, suspended the sentences, and placed defendant on 36 months supervised probation. The regular conditions of defendant's probation included, in pertinent part: "(5) Remain within the jurisdiction of the Court unless granted permission to leave by the Court or the probation

officer[; and] (6) Report as directed by the Court or the probation officer to the officer at reasonable times and places and in a reasonable manner." The trial court transferred supervision of defendant's probation case to South Carolina as a special condition of defendant's probation.

In August 2005, defendant's probation officer filed two probation violation reports, each alleging that defendant had willfully violated:

1. Regular Condition of Probation "Remain within the jurisdiction of the Court unless granted written permission to leave by the Court or the probation officer" in that THE DEFENDANT PROBATION WAS TRANSFERRED TO SOUTH CAROLINA BUT FAILED TO REPORT AS INSTRUCTED SINCE 04/18/2005. A CONTACT LETTER WAS MAILED TO DEFENDANT LIST RESIDENCE LOCATED AT 127 WYLIE RD., MCCOLL, SC. THE DEFENDANT DID NOT RESPOND TO THE LETTER AND HAS NOT MADE HIS WHEREABOUTS KNOWN TO HIS PROBATION OFFICER.

Judge Richard T. Brown held a probation violation hearing on 6 November 2007. Defendant, through counsel, denied violating his probation. Defendant's probation officer, Duane Massey, testified that he handled defendant's intake process for the transfer of his case to South Carolina. Officer Massey testified that he gave defendant a travel voucher and instructed defendant to report to the South Carolina probation office no later than 4 April 2005.

Officer Massey testified that on 22 July 2005, he received correspondence in which South Carolina denied the transfer request due to its inability to supervise defendant's case. The correspondence stated that defendant had reported to the South

Carolina office on 18 April 2005, 14 days late; that he was advised at that time to call the office every Friday until the paper work arrived; that defendant failed to call the office despite officers having left several messages on defendant's answering machine; and that defendant had not made contact with the South Carolina office since 18 April 2005. Officer Massey sent a letter to defendant's last known South Carolina address asking defendant to contact his probation officer. When defendant did not respond, Officer Massey filed the probation violation reports.

On cross-examination, defendant's counsel asked Officer Massey: "Which condition do you indicate [defendant] has violated?" Officer Massey responded, "Failure to report." Officer Massey acknowledged that the actual violation report stated defendant violated the regular condition of probation that defendant remain within the jurisdiction unless granted permission to leave. When defendant's counsel also asked the probation officer, "So, you didn't violate him on leaving the jurisdiction of the court or absconding in anyway, correct?" Officer Massey responded, "Correct."

Defendant did not testify at the hearing. After hearing the evidence and arguments of counsel, Judge Brown found a violation of probation. The trial court revoked defendant's probation and activated his original sentences. Defendant timely appealed to this Court.

In his sole argument on appeal, defendant contends the trial court erred in revoking his probation because the State did not

present evidence that he violated the regular condition of his probation that he remain within the jurisdiction unless granted permission to leave, as was alleged in his probation violation reports. Relying on *State v. Cunningham*, 63 N.C. App. 470, 305 S.E.2d 193 (1983), defendant asserts that his actions did not violate the specific condition cited in his violation report and, therefore, his revocation should be reversed.

In *Cunningham*, the probation violation alleged by the State was that the defendant had played loud music disturbing his neighbors and removed property signs posted by his neighbors. Defendant's probation was, however, ultimately revoked on the ground that he trespassed and committed malicious damage to property. *Id.* at 475, 305 S.E.2d at 196. This Court reversed one probation revocation because "[t]he record does not show that defendant received notice or a statement of an alleged violation" found by the trial court. *Id.*

Here, while the probation violation report referred to the wrong regular condition of probation, it also set out the specific facts that the State contended constituted the violation: that defendant did not report as instructed since 18 April 2005, that he did not respond to a letter sent to his residence in South Carolina, and that he had not made his whereabouts known to his probation officer. These facts allege a violation of regular condition of probation six, rather than regular condition five, as stated in the violation report. Nevertheless, the evidence presented at the hearing established the facts set out in the

violation report. Thus, in contrast to *Cunningham*, defendant does not, and cannot, argue that he failed to receive notice of the actual violation alleged and proven by the State.

It is well settled that "[p]robation or suspension of sentence comes as an act of grace to one convicted of, or pleading guilty to, a crime." *State v. Duncan*, 270 N.C. 241, 245, 154 S.E.2d 53, 57 (1967). In order to revoke a defendant's probation, the evidence need only "reasonably satisfy the [trial court] in the exercise of [its] 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). The breach of any one condition of probation is sufficient grounds to revoke a defendant's probation. *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). A defendant has the burden of presenting competent evidence demonstrating an inability to comply with the terms of probation. *State v. Tozzi*, 84 N.C. App. 517, 521, 353 S.E.2d 250, 253 (1987). "[E]vidence of [a] defendant's failure to comply may justify a finding that [a] defendant's failure to comply was wilful or without lawful excuse." *Id.* A trial court's judgment revoking a defendant's probation will only be disturbed upon a showing of a manifest abuse of discretion. *State v. Guffey*, 253 N.C. 43, 45, 116 S.E.2d 148, 150 (1960).

We conclude that the State presented sufficient evidence to show that defendant willfully violated a condition of his probation without lawful excuse. Testimony at the hearing reflects that defendant reported to the South Carolina probation office on 18 April 2005, but did not contact the probation office after that date. In addition, defendant failed to respond to a letter from Officer Massey. Defendant did not show lawful excuse or lack of willfulness. We, therefore, hold that the trial court did not err in finding that defendant willfully and without lawful excuse violated a condition of his probation.

Affirmed.

Judges WYNN and ELMORE concur.

Report per Rule 30(e).