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NO. COA08-54

NORTH CAROLINA COURT OF APPEALS

Filed: 21 October 2008

STATE OF NORTH CAROLINA

v.

Wayne County  
No. 06 CRS 53787

COREY DEVON JORDAN

Appeal by defendant from judgment entered 2 October 2007 by Judge Jerry Braswell in Superior Court, Wayne County. Heard in the Court of Appeals 06 October 2008.

*Attorney General Roy Cooper, by Assistant Attorney General Vanessa N. Tosten, for the State.*

*Terry F. Rose, for defendant-appellant.*

WYNN, Judge.

"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."<sup>1</sup> Because we find sufficient evidence was presented to show that Defendant Corey Devon Jordan violated his probation by possessing or controlling an illegal substance, we affirm the trial court's revocation of Defendant's probationary sentence.

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<sup>1</sup> *State v. Tozzi*, 84 N.C. App. 517, 521, 353 S.E.2d 250, 253 (1987).

On 24 October 2006, Defendant pled guilty to possession of a firearm by a felon and was sentenced to a term of twelve to fifteen months' imprisonment. This sentence was suspended and Defendant was placed on twenty-four months supervised probation. Several conditions were placed on Defendant's probation, including that he "[n]ot use, possess, or control any illegal drug or controlled substance unless it has been prescribed for the defendant by a licensed physician[.]"

On 16 July 2007, the State filed a probation violation report alleging that Defendant wilfully violated his probation by possessing several grams of cocaine. The report also alleged that Defendant admitted the cocaine was his and that he had been selling for two weeks.

At the probation violation hearing on 1 October 2007, the State's evidence tended to show that probation officer Merwyn Smith visited Defendant's home on 16 July 2007 for a routine curfew check. Mr. Smith testified that Defendant was wearing gloves when he opened the door and explained that he had been cleaning. After Defendant allowed Mr. Smith to enter, Mr. Smith followed Defendant through the house and saw Defendant pick up an object and throw it behind a dresser. Mr. Smith informed Defendant that he would search the house and put Defendant in handcuffs as a precaution. Although Mr. Smith admitted he had not been trained to know the difference between real and counterfeit drugs, he testified that he found "a couple of baggies of what appeared to be crack cocaine." He stated that when he asked Defendant why he was dealing drugs,

Defendant said he had been selling for about two weeks because he had not been making enough money pushing an Icee cart.

In addition to the baggies containing a white substance, police officers also found scales, razor blades, bags, and \$1,395 in cash in the search of Defendant's residence. Although the substance found in the baggies had been sent to the State Bureau of Investigation for analysis, the report was not ready for the hearing.

Defendant did not present any evidence on his behalf. The trial court determined that Defendant violated a condition of his probation and entered judgment activating Defendant's sentence of twelve to fifteen months' imprisonment.

On appeal, Defendant contends the trial court erred by revoking his probation where no evidence was presented that the substance found was in fact an illegal drug or a controlled substance. Without such evidence, Defendant argues the trial court could not have found that he wilfully violated a condition of his probation. We disagree.

Probation may be revoked upon a finding by the trial court that a defendant violated one or more conditions of his probation. N.C. Gen. Stat. § 15A-1345 (2007). Formal rules of evidence do not apply to a probation revocation hearing, and an alleged violation does not need to be proven beyond a reasonable doubt. *State v. Tozzi*, 84 N.C. App. 517, 520-21, 353 S.E.2d 250, 252-53 (1987). The State need only present "evidence satisfying the trial court in its discretion that the defendant violated a valid condition of

probation without lawful excuse." *Id.* at 521, 353 S.E.2d at 253. The burden is then on the defendant to show he was unable to comply with the conditions of his probation. *Id.*

In the instant case, we find that sufficient evidence was presented to show that Defendant violated his probation by possessing or controlling an illegal substance. Mr. Smith saw Defendant attempt to hide a plastic baggie containing what appeared to Mr. Smith to be crack cocaine, and other bags containing a similar substance were found, along with a large amount of cash, scales, and razor blades. Further, Mr. Smith's testimony that Defendant confirmed that he had been selling for two weeks is sufficient to allow an inference that the drugs were real. Taken together, this evidence is sufficient to support the trial court's finding that Defendant violated his probation by possessing or controlling an illegal substance.

Affirmed.

Judges ELMORE and GEER concur.

Report per Rule 30(e).