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NO. COA10-263

NORTH CAROLINA COURT OF APPEALS

Filed: 2 November 2010

STATE OF NORTH CAROLINA

v.

Rockingham County
Nos. 07 CRS 2950, 4394

DONALD RAY PRUITT

Appeal by defendant from judgments entered 6 October 2009 by Judge L. Todd Burke in Rockingham County Superior Court. Heard in the Court of Appeals 25 October 2010.

Roy Cooper, Attorney General, by Donald T. O'Toole, Assistant Attorney General, for the State.

Duncan B. McCormick, for defendant-appellant.

MARTIN, Chief Judge.

Defendant appeals from judgments revoking his probation and activating his sentences for felony death by vehicle and felony serious injury by vehicle. He argues the trial court erred and abused its discretion in finding wilful violations of probation and in revoking his probation. We affirm the judgments of the trial court.

On 9 July 2007, a grand jury indicted defendant for felony death by motor vehicle in case number 07 CRS 2950. On 1 October 2007, a grand jury indicted defendant for felony serious injury by motor vehicle in case number 07 CRS 4394. On 5 February 2008,

defendant pleaded guilty to both charges. The trial court entered judgment, and imposed sentences of 29 to 44 months of imprisonment for felony death by vehicle and 15 to 18 months of imprisonment for felony serious injury by vehicle. The court suspended the sentences, ordered defendant to serve an active term of sixty days, and placed defendant on supervised probation for a period of 36 months.

On 1 June 2009, a probation violation report was filed in case number 07 CRS 2950 which alleged the following violations: (1) defendant failed to complete any hours of community service; (2) defendant failed to report for scheduled office visits on two occasions; (3) defendant was in arrears in the amount of \$750 on court ordered payments; (4) defendant was in arrears in the amount of \$450 on probation supervision fees; (5) defendant failed to apprise the probation officer of his whereabouts after leaving his residence; (6) defendant failed to provide any proof of having completed any substance abuse treatment; (7) on 24 December 2008 defendant was charged with several criminal offenses; and (8) defendant failed to report to serve his active term on twenty-five occasions.

Also on 1 June 2009, a second probation violation report was filed, this time in case number 07 CRS 4394, which alleged all of the same violations, except for the monetary conditions. Instead of violations number (3) and (4) listed above, defendant was alleged to be in arrears in the amount of \$70 for the second case.

Both reports were re-filed on 14 August 2009, signed and verified by the probation officer.

The matter came on for hearing on 6 October 2009. Defendant was represented by counsel, and the probation officer was also present at the hearing. When asked if defendant wanted to admit or deny the allegations contained in the probation violation reports, defense counsel stated, "He admits." Defense counsel asked the trial court for a second chance for defendant. The trial court noted that defendant had missed 25 weekends when he was supposed to report for jail to complete the active portion of his sentence, a violation which the court stated was enough by itself to support revocation of probation. Defense counsel replied that defendant had completed 25 of the 30 weekends he was supposed to report to jail to complete the active portion of his sentence. The probation officer agreed with that statement, but stated that the missed weekends kept getting added on to the end, "the ones he never finished at the last." Defendant had no further response to this. Defense counsel did state that defendant had been found not guilty of the criminal charges, and the State did not refute that assertion. With regard to another violation, it was reported that defendant had completed a substance abuse assessment, although he had not completed the recommended treatment, apparently because it was ongoing. No further discussion was conducted regarding any of the violations.

The trial court then determined that defendant wilfully violated the conditions of his probation and entered judgment

revoking probation and activating both sentences. The court denied defendant's request to have the sentences run concurrently.

Defendant first contends the trial court failed to conduct a proper hearing with the presentation of witnesses and evidence before making findings regarding probation violations. He argues that the allegations contained in the reports should not have been the sole basis for finding that defendant violated his probation. He also asserts that the allegations were disputed as shown by the discussion regarding defendant's completion of most of his active term, the acquittal on criminal charges, and the completion of a substance abuse assessment. Defendant contends the trial court abused its discretion by failing to consider any evidence, and that the findings and conclusions are therefore not supported. We disagree.

The appellate courts of this state have held that "probation or suspension of sentence is an act of grace and not of right." *State v. Duncan*, 270 N.C. 241, 246, 154 S.E.2d 53, 57 (1967). Once a defendant accepts a suspended or probationary sentence, "he voluntarily assumes the obligations imposed." *State v. Young*, 21 N.C. App. 316, 319, 204 S.E.2d 185, 187 (1974).

A trial court has the discretion to revoke probation upon evidence which is sufficient to satisfy the court that a defendant has wilfully violated a condition of his probation. *State v. Darrow*, 83 N.C. App. 647, 648-49, 351 S.E.2d 138, 139 (1986). "A proceeding to revoke probation is not a criminal prosecution, and we have no statute requiring a formal trial." *Duncan*, 270 N.C. at

245, 154 S.E.2d at 57. Further, "the court is not bound by strict rules of evidence, and the alleged violation of a valid condition of probation need not be proven beyond a reasonable doubt." *Id.* A verified probation violation report which is uncontradicted constitutes sufficient evidence from which a trial court may determine that probation should be revoked. *State v. Dement*, 42 N.C. App. 254, 255, 255 S.E.2d 793, 794 (1979).

It is well established that a single wilful violation is sufficient to support revocation of probation. *State v. Braswell*, 283 N.C. 332, 337, 196 S.E.2d 185, 188 (1973). Once a violation is found, it is defendant's burden to present sufficient competent evidence that he was unable to comply with the conditions of his probation. *State v. Tozzi*, 84 N.C. App. 517, 521, 353 S.E.2d 250, 253 (1987). Absent such evidence, failure to comply "may justify a finding that defendant's failure to comply was wilful or without lawful excuse." *Id.* Moreover, the trial court is "not required to accept defendant's evidence as true." *State v. Williamson*, 61 N.C. App. 531, 535, 301 S.E.2d 423, 426 (1983). Finally, "[a] trial court's judgment revoking a defendant's probation will be disturbed only upon a showing of a manifest abuse of discretion." *State v. Hubbard*, ___ N.C. App. ___, ___, 678 S.E.2d 390, 394 (2009).

In the instant case, defendant admitted to his violations through counsel, based on the verified probation violation reports filed by his probation officer. No further evidence of the violations was required. It was then incumbent upon defendant to provide evidence that he was unable to comply with the conditions

of his probation in order to refute the wilfulness of the violations. Defendant's contention that he was prevented from presenting evidence is belied by the discussion that did take place at the hearing regarding his level of compliance with certain of the probation conditions. Defendant was able to present information to the trial court regarding the completion of 25 out of 30 weekends of his active sentence, that he had been acquitted of his criminal charges, and that he had completed a substance abuse assessment and the treatment from that assessment was ongoing.

Defendant did not, however, provide any explanation at the revocation hearing for why he could not comply with the remaining conditions at issue regarding community service, reporting to the probation officer, payment of monies and probation supervision fees, and leaving his place of residence without informing his probation officer of his whereabouts. Since defendant admitted to these violations without providing any evidence that would tend to show a lack of wilfulness, the trial court did not err in finding that the violations were wilful, and in using the violations to determine that defendant's probation should be revoked. Since our inquiry need go no further, we decline to address the remainder of defendant's arguments.

In conclusion, the trial court did not err in determining that defendant had wilfully violated the conditions of his probation where defendant admitted to the violations as alleged in the verified probation violation reports, nor did the trial court abuse

its discretion in revoking probation and entering judgment while activating defendant's sentences. Therefore, we affirm the judgments of the trial court.

Affirmed.

Judges ELMORE and JACKSON concur.

Report per Rule 30(e).