NO. COA10-311

NORTH CAROLINA COURT OF APPEALS

Filed: 2 November 2010

STATE OF NORTH CAROLINA

v. Davidson County
Nos. 04 CRS 1343-44

ABRAM LEE HANCOCK

Appeal by defendant from judgments entered 3 December 2009 by Judge Kevin M. Bridges in Davidson County Superior Court. Heard in the Court of Appeals 25 October 2010.

Attorney General Roy Cooper, by Assistant Attorney General Newton G. Pritchett, Jr., for the State.

Irons & Irons, P.A., by Ben G. Irons, II, for defendant-appellant.

MARTIN, Chief Judge.

Defendant pled no contest on 4 February 2004 to five counts of taking indecent liberties with a child. In accordance with the plea agreement, the trial court sentenced defendant to three consecutive active terms of imprisonment of 19 to 23 months and to two suspended terms of the same duration, to run at the expiration of the active terms. On 6 November 2009 defendant's probation officer executed a violation report alleging defendant violated conditions of probation requiring him (1) to pay a monthly probation supervision fee; (2) to comply with a sex offender control program condition mandating that he not socialize or

communicate with a person under the age of 18 in work or social activities unless accompanied by a responsible adult who is aware of the prior abuse; and (3) to notify the probation officer if he fails to obtain or retain satisfactory employment. After conducting a hearing, the court found that defendant willfully and without lawful excuse committed the charged violations. The court revoked probation and activated the two sentences.

Defendant first contends that he was not provided with adequate notice of the conditions of his release on probation. In support of this contention, he calls our attention to the lack of anything in the judgments suspending sentence stating that defendant must participate in the sex offender control program and abide by the terms and conditions of the program.

The governing statute with respect to notice of the conditions of probation is N.C.G.S. § 15A-1343(c), which provides that "[a] defendant released on supervised probation must be given a written statement explicitly setting forth the conditions upon which he is being released." N.C. Gen. Stat. § 15A-1353(c) (2009). Oral notice in open court is not a satisfactory substitute for the written statement required by this statute. *State v. Suggs*, 92 N.C. App. 112, 113, 373 S.E.2d 687, 688 (1988). If the record does not affirmatively show that a defendant received some form of written notification of the terms and conditions of probation, the condition prescribed by the trial court is invalid. *State v. Lambert*, 146 N.C. App. 360, 368-69, 553 S.E.2d 71, 78 (2001), *disc. review denied*, 355 N.C. 289, 561 S.E.2d 271 (2002). The written

notification requirement may be satisfied by the execution of an acknowledgment by the defendant of one or more conditions of probation. *State v. Henderson*, 179 N.C. App. 191, 197-98, 632 S.E.2d 818, 822 (2006).

The record in this case affirmatively shows that defendant was given written notice of this condition of probation. The judgment entered in case number 04 CRS 1343 imposed as a special condition of probation for a sex offender that defendant register as a sex offender, participate in sex offender treatment program, and not communicate with, or be in the presence of, or be found in or on the premises of the victim of the offense. Defendant's probation officer testified that on February the 25th, 2009, during an office visit or contact with defendant, he reviewed and explained all 18 conditions of the sex offender control program and read and explained the conditions and gave defendant a copy.

Moreover, we observe that defendant only challenges the lack of notice as to the special condition of probation regarding the sex offender program. To revoke probation, all that is required is a finding by the court that the defendant violated a single condition of probation. *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). In revoking probation in the case at bar, the court found that each violation "is in and of itself a sufficient justification to revoke probation." If the court's finding that defendant violated one of the other conditions can be upheld, then any error in failing to give defendant written notice

of this condition of probation is moot and "[f]urther discussion of this assignment to demonstrate its lack of merit is unnecessary." *State v. Braswell,* 283 N.C. 332, 337, 196 S.E.2d 185, 188 (1973)(citation omitted).

Defendant contends that the remaining violations found by the court were not willful and were not sufficient legal grounds to revoke his probation. "All that is required in a hearing [upon a violation report] is that the evidence be such as to 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 report of a probation officer stating in detail the violations of the conditions of probation is competent evidence to establish the violations. *State v. Duncan*, 270 N.C. 241, 246, 154 S.E.2d 53, 58 (1967). A decision addressed to the discretion of a trial judge will not be disturbed unless it is shown that the ruling "could not have been the result of a reasoned decision." *State v. Wilson*, 313 N.C. 516, 538, 330 S.E.2d 450, 465 (1985).

The violation report alleged that defendant, having paid only a total of $55.00 toward the monthly supervision fee set by law, was in arrears in the amount of $275.00 on the supervision fee. The probation officer testified and confirmed that defendant was in arrears in the amount of $275.00 at the time of the filing of the report. The probation officer also testified that defendant has

not had a full-time job, only sporadic odd jobs working with his dad and mowing yards. He further testified that defendant attended a community college for only three weeks before dropping out, that he referred defendant to Career Connections, an organization which helps offenders obtain employment or school studies, but defendant did not report to the organization on a regular basis as the officer had instructed him to do.

Defendant testified that he fell behind in his supervision payments because he suffers from depression and lacks transportation. Defendant also testified that he had a job cutting trees, that he lost that job because he is a sex offender, and that it is difficult to find a job where he would not have contact with minors. Defendant further testified that he lived "in the middle of town" with his parents, one of whom is disabled, and that he has a truck which needs a carburetor costing $600.

Evidence of a violation is sufficient to support a finding that the violation was willful or without lawful excuse unless the defendant can successfully carry his burden of showing lawful excuse or lack of willfulness. *State v. Crouch*, 74 N.C. App. 565, 567, 328 S.E.2d 833, 835 (1985). In the case at bar, defendant did not carry this burden to the court's satisfaction. We can discern no abuse of discretion.

The judgments are affirmed.

Affirmed.

Judges ELMORE and JACKSON concur.

Report per Rule 30(e).