NO. COA10-527

NORTH CAROLINA COURT OF APPEALS

Filed: 7 December 2010

STATE OF NORTH CAROLINA

v. Brunswick County
Nos. 09 CRS 3500-03

RANDY DOUGLAS EDGE,
Defendant.

Appeal by defendant from judgments entered 30 September 2009 by Judge Franklin Lanier in Brunswick County Superior Court. Heard in the Court of Appeals 11 October 2010.

Attorney General Roy Cooper, by Assistant Attorney General Bethany A. Burgon, for the State.

Larry C. Economos for defendant-appellant.

ELMORE, Judge.

Defendant Randy Douglas Edge (defendant) appeals from judgments entered upon revocation of probation. For the following reasons, we affirm.

On 3 November 2008, defendant pled guilty to three counts of violating a domestic violence protective order and one count of felony stalking. The trial court sentenced defendant to eight to ten months imprisonment for each conviction, suspended the sentences, and placed defendant on thirty-six months' supervised probation. Conditions of defendant's probation included that defendant not commit a criminal offense in any jurisdiction; that

he not threaten or have any contact with the victims, Mike and Pamela Howell; and that report as directed to his probation officer in a reasonable manner.

Defendant's probation officer, Don Barnes, filed a violation report for each of the four cases on 2 July 2009. The reports alleged that defendant had violated the terms of his probation by: (1) failing to report to his probation officer in a reasonable manner; (2) committing a criminal offense; and (3) making harassing phone calls to a former girlfriend.

The matter came on for hearing before Judge Franklin R. Lanier on 30 September 2009. Defendant, through his counsel, denied the violations of probation. Patricia Charland (Charland) testified that she and defendant dated for about two months and that she ended the relationship on 28 June 2009. Charland testified that after the relationship ended, she received numerous telephone calls and messages from defendant at work and home. Specifically, on the night of 29 June 2009 and the morning of 30 June 2009, defendant called her home telephone and left eight voicemail messages, and, during the day of 30 June 2009, defendant called her work telephone nine times. Charland testified that she pleaded with defendant not to call her and, when he did not stop, she contacted defendant's probation officer, who advised her to take out a protection order against defendant. Charland further testified that defendant was subsequently charged with making harassing phone calls in July 2009; that defendant was found guilty of the charge in district

court; and that the case is currently on appeal in superior court.

Probation officer Barnes testified that Charland called him on 30 June 2008 and informed him that defendant was "calling her non-stop and going to her parents house[.]" Afterwards, Officer Barnes contacted defendant and told him that Charland did not want to hear from him. Defendant told his probation officer that "he understood." On the morning of 2 July 2008, however, Charland called Officer Barnes and informed him that defendant "had called her 11 times that morning already[.]" Probation officer Barnes advised Charland to go to the magistrate's office. Officer Barnes also testified that, during a routine office visit, he reminded defendant that if there was any contact with the Howells, defendant would be immediately arrested. In response, "[defendant] made the statement that, if that son-of-a-bitch was six foot under there wouldn't be any more problems." The probation officer testified that he was "rather shocked" and that he "never had anybody in [his] office before make a threat against a victim like that." Officer Barnes further testified that he related defendant's statement to Mike Howell.

Defendant admitted calling, texting, and leaving messages for Charland after their relationship ended, but denied doing so to harass her. Defendant testified that he called Charland out of concern for her well being. Defendant admitted telling his probation officer during an office visit, "when is this all gonna end, if that son of a bitch was dead and six feet under, you know,

I have no problems." After hearing the testimony, Judge Lanier found that defendant willfully violated his probation. By judgments entered 30 September 2009, the trial court found that defendant violated each condition set out in the violation report, revoked defendant's probation, and activated his original sentences. Defendant appeals.

In his sole argument on appeal, defendant contends the trial court abused its discretion in finding that he willfully violated the terms of his probation. We disagree.

It is well settled that "'probation or suspension of sentence comes as an act of grace to one convicted of, or pleading guilty to, a crime.'" *State v. Tennant*, 141 N.C. App. 524, 526, 540 S.E.2d 807, 808 (2000) (quoting *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). A verified probation violation report is competent evidence that a violation occurred. *State v. Duncan*, 270 N.C. 241, 246, 154 S.E.2d 53, 58 (1967). 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.* The defendant has the burden of showing excuse or lack of willfulness; otherwise, evidence of failure to comply is sufficient to support a finding that the violation was willful or without lawful excuse. *State v. Crouch*, 74 N.C. App. 565, 567, 328 S.E.2d 833, 835 (1985). 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 the State presented sufficient evidence to show that defendant willfully violated a condition of his probation without lawful excuse. Here, it was alleged that defendant willfully violated a regular condition of his probation that he "commit no criminal offense in any jurisdiction." Testimony at the hearing reflects that defendant repeatedly telephoned Charland; that defendant was criminally charged with making harassing phone calls; and that he was found guilty of the charge in district court. Further, defendant admitted calling his former girlfriend on numerous occasions. We hold that there is evidence in the record to support the judge's findings that defendant willfully and without lawful excuse violated the conditions of his probation. We further hold that it was within the trial court's discretion to revoke defendant's probation and activate his sentences. *See State v. Seay*, 59 N.C. App. 667, 670-71, 298 S.E.2d 53, 55 (1982) (breach

of any one condition is sufficient grounds to revoke probation).

Accordingly, the trial court's judgments revoking defendant's probation are affirmed.

Affirmed.

Chief Judge MARTIN and Judge JACKSON concur.

Report per Rule 30(e).