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NO. COA12-208

NORTH CAROLINA COURT OF APPEALS

Filed: 16 October 2012

STATE OF NORTH CAROLINA

v.

Cumberland County
Nos. 07 CRS 68729
09 CRS 50434

JUSTIN BRYAN LEJEUNE,
Defendant.

Appeal by defendant from orders entered 19 September 2011 by Judge James F. Ammons, Jr. in Cumberland County Superior Court. Heard in the Court of Appeals 12 September 2012.

Attorney General Roy Cooper, by Assistant Attorney General Brian R. Berman, for the State.

Levine & Stewart, by James E. Tanner, III, for defendant-appellant.

HUNTER, Robert C., Judge.

Justin Bryan Lejeune ("defendant") appeals from the trial court's orders revoking his probation and activating two suspended sentences. On appeal, defendant argues the trial court erred in revoking his probation because: (1) he did not

have notice of the alleged violations considered at the revocation hearing; and (2) the trial court's revocation was not supported by competent evidence. After careful review, we affirm the trial court's orders.

Background

In April 2008, defendant was indicted for breaking and entering into a motor vehicle, conspiracy for breaking and entering into a motor vehicle, and assault. On 6 November 2008, defendant entered a plea agreement in case 07 CRS 68729 whereby he pled guilty to the charges of breaking and entering a motor vehicle and assault while the charge of conspiracy was dismissed. The trial court entered a suspended sentence of six to eight months with a 24-month period of supervised probation, and assessed defendant costs, fines, and attorney's fees.

On 4 March 2010, defendant pled guilty in case 09 CRS 50434 to two counts of trafficking in opium or heroin while related charges were dismissed. Pursuant to the plea agreement, the State agreed to suspend entry of judgment on defendant's plea until sought by the State, and defendant agreed to provide assistance to the state and federal governments in investigations into related drug trafficking activities. On 8 August 2010, defendant's probation in case 07 CRS 68729 was

extended by an additional 24 months to provide time for defendant to pay outstanding costs. On 4 November 2010, the trial court entered a suspended sentence of 35 to 42 months with 36 months of supervised probation and assessed costs and fines in case 09 CRS 50434.

On 1 March 2011, defendant's probation officer completed violation reports for cases 07 CRS 68729 and 09 CRS 50434. The reports alleged that defendant willfully violated the same three probation conditions in each case: (1) that he report as directed by the court or probation officer at reasonable times and places; (2) that he pay the clerk of court the fees and costs assessed in each case; and (3) that he remain within the jurisdiction of the court unless granted written permission to leave by the court or probation officer. Each violation report provided factual bases for each of the alleged violations. On 10 March 2011, defendant signed both violation reports acknowledging that he had received a copy of the reports and that he understood their contents.

A probation violation hearing was held on 15 June 2011. For both cases, 07 CRS 68729 and 09 CRS 50434, the trial court determined that "the defendant admitted or the [c]ourt is reasonably satisfied" that defendant violated each of the

conditions provided in the violation reports. The disposition in each case was continued until 19 September 2011.

On 19 September 2011, defendant appeared at the probation revocation hearing. In open court, defendant acknowledged that he had received a copy of the probation violation reports, and he admitted to willfully violating the conditions listed in the reports. The trial court found defendant in willful violation of his probation as set forth in the violation reports and activated the sentences in both cases, specifying that the two sentences were to run concurrently. Defendant appeals.

Discussion

Defendant contends the trial court erred in revoking defendant's probation because: (1) defendant did not have notice of the alleged violations considered at the revocation hearing; and (2) the trial court's revocation was not supported by competent evidence. We disagree.

A trial court's determination that a defendant has violated a condition of his probation must be supported by competent evidence and may not be overturned absent an abuse of discretion. *State v. Guffey*, 253 N.C. 43, 45, 116 S.E.2d 148, 150 (1960). Such evidence must be "substantial evidence of sufficient probative force to generate in the minds of

reasonable men the conclusion that defendant has in fact breached the condition in question." *State v. Millner*, 240 N.C. 602, 605, 83 S.E.2d 546, 548 (1954).

Here, the record clearly establishes that defendant admitted he received a copy of the probation violation reports, and that he admitted the willful violations of his probation as alleged in the reports. As we have previously stated, a defendant in a probation revocation hearing may waive his right to a disclosure of the evidence against him "by an in-court admission of the willful or without lawful excuse violation as contained in the written notice (or report) of violation[.]'" *State v. Sellers*, 185 N.C. App. 726, 728, 649 S.E.2d 656, 657 (2007) (affirming revocation of the defendant's probation where the defendant received notice of the alleged violations and admitted, through counsel, to two violations contained in the report) (quoting *State v. Williamson*, 61 N.C. App. 531, 533-34, 301 S.E.2d 423, 425 (1983)). Defendant received notice of the alleged probation violations and admitted the conditions were willfully violated. Additionally, the verified and uncontradicted probation violation reports may serve as sufficient evidence to support the trial court's revocation of probation. *State v. Dement*, 42 N.C. App. 254, 255, 255 S.E.2d

793, 794 (1979). Thus, there was competent evidence to support the trial court's orders.

Defendant argues, however, that he was not provided with notice of alleged violations that were considered by the trial court. The transcript reveals that the trial court questioned counsel about probation violations not alleged in the violation report. Yet, where a trial court sits without a jury and hears both competent and incompetent evidence, we presume that the court disregards any incompetent evidence in reaching its decision. *State v. Seay*, 59 N.C. App. 667, 670, 298 S.E.2d 53, 55 (1982) (rejecting the defendant's argument that the trial court erred in revoking his probation because incompetent evidence was presented to the trial court where the record contained competent evidence of his probation violations), *appeal dismissed and disc. review denied*, 307 N.C. 701, 301 S.E.2d 394 (1983). Therefore, in light of the competent evidence supporting the trial court's revocation orders, it is immaterial that the trial court discussed with counsel alleged violations that did not appear in defendant's probation violation reports. Defendant's argument is overruled.

Defendant also argues that the trial court's revocation of probation was impermissibly based on hearsay and that the

revocation orders must be reversed. Regardless of whether some of the evidence presented at the hearing was hearsay, defendant's in-court admission, through counsel, was not hearsay and provided a sufficient basis for the revocation of probation. See *Sellers*, 185 N.C. App. at 728-29, 649 S.E.2d at 657-58. Defendant's argument is without merit and is overruled.

Lastly, defendant argues that there was no evidence that his failure to pay the fees, fine, and costs due under the terms of his probation orders was a willful failure to pay. Defendant, however, conceded the willfulness of his failure to pay at the probation violation hearing, and, as stated above, the verified and uncontradicted probation violation reports provided sufficient evidence of the willfulness of his actions. See *Dement*, 42 N.C. App. at 255, 255 S.E.2d at 794. Furthermore, defendant conceded to the willful violation of other probation conditions, and competent evidence of one alleged violation is sufficient to revoke probation. See *Seay*, 59 N.C. App. at 670-71, 298 S.E.2d at 55-56.

Because the trial court's revocation of defendant's probation was supported by competent evidence, the trial court's orders are affirmed.

AFFIRMED.

Judges BRYANT and STEELMAN concur.

Report per Rule 30(e).