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NO. COA13-354
NORTH CAROLINA COURT OF APPEALS

Filed: 15 October 2013

STATE OF NORTH CAROLINA

v.

Wake County
Nos. 12 CRS 6364-66

SNOW SUTTON BARNES

Appeal by defendant from judgments entered 30 August 2012 by Judge Lucy N. Inman in Wake County Superior Court. Heard in the Court of Appeals 7 October 2013.

Attorney General Roy Cooper, by Assistant Attorney General Lareena J. Phillips, for the State.

William D. Spence for defendant-appellant.

BRYANT, Judge.

Defendant Snow Sutton Barnes appeals from the judgments entered after the revocation of her probation. Defendant contends the trial court erred by making an extraneous finding of fact in the judgments and abused its discretion by failing to accept her excuse for violating her probation. We affirm the judgments.

On 23 September 2010, defendant pled guilty to eight counts of obtaining a controlled substance by fraud or forgery. The convictions were consolidated into three judgments imposing consecutive terms of three to four months imprisonment, the sentences were suspended, and defendant was placed on 24 months supervised probation. On 14 June 2012, defendant's probation officer filed violation reports alleging defendant had violated her probation by committing the same offense again on four dates in June and July 2011.

At the probation revocation hearing, defendant admitted to the violations. Defendant asked the trial court to consider electronic house arrest rather than revocation because she committed the crimes as a result of chronic pain and other medical conditions. The trial court responded:

I do sympathize, Ms. Barnes, with the chronic pain that you are reporting and the medical difficulties that you have. Unfortunately, committing the very same offense that you're on probation for is a very strong sign to the Court that you weren't a good candidate for probation in the first place.

The trial court revoked defendant's probation and activated the suspended sentences. Defendant appeals.

On appeal, defendant raises two issues: (I) whether the trial court erred in revoking defendant's probation pursuant to

the Justice Reinvestment Act; and (II) whether the revocation of defendant's probation was an abuse of discretion.

I

Defendant first argues that the trial court's revocation of her probation was caused by emphasis placed upon her probation violation as a result of the trial court's reading of the Justice Reinvestment Act. Defendant's contention is predicated on the trial court's uncontested finding that defendant "willful[ly] violat[ed] the condition(s) that he/she not commit any criminal offense, G.S. 15A-1343(b)(1)[.]" Defendant's argument has no merit.

"[P]robation remains conditional and subject to revocation during the period of probation imposed[.]" N.C. Gen. Stat. § 15A-1342(a) (2011). Probation can be revoked "when the State satisfies its burden of proof to show that [the] defendant either willfully violated a term of probation or violated a condition without lawful excuse." *State v. Sherrod*, 191 N.C. App. 776, 778, 663 S.E.2d 470, 472 (2008) (citation omitted). Pursuant to General Statutes, section 15A-1343, as a regular condition of probation, a defendant must "[c]ommit no criminal offense in any jurisdiction." N.C. Gen. Stat. § 15A-1343(b)(1) (2011).

During her probation revocation hearing, defendant admitted violating the conditions of her probation, acknowledging that she had been convicted of obtaining a controlled substance by forgery and fraud for offenses occurring during her probation period. In accordance with this admission, on each of the three Judgment and Commitment Upon Revocation of Probation forms entered against defendant, the trial court under Findings checked a box under finding number five which acknowledges "the willful violation of the condition(s) that [defendant] not commit any criminal offense, G.S. 15A-1343(b)(1)" Defendant does not contest the accuracy of this finding or the sufficiency of the finding as a ground for revoking her probation. Accordingly, we overrule defendant's argument.

II

In her second argument, defendant contends the trial court abused its discretion by revoking her probation based on her admitted violations. We disagree.

Probation "comes as an act of grace to one convicted of crime." *State v. Hewett*, 270 N.C. 348, 351, 154 S.E.2d 476, 478 (1967) (citation omitted). A probationer's sentence may be activated if the evidence presented at the hearing is sufficient "to reasonably satisfy the judge in the exercise of his sound

discretion that the defendant has violated a valid condition upon which the sentence was suspended." *State v. Duncan*, 270 N.C. 241, 245, 154 S.E.2d 53, 57 (1967). "The breach of any single valid condition upon which the sentence was suspended will support an order activating the sentence." *State v. Braswell*, 283 N.C. 332, 337, 196 S.E.2d 185, 188 (1973) (citation omitted).

In this case, defendant admitted to violating her probation by committing the same offense for which she was originally placed on probation. The trial court's remarks indicate that it considered defendant's excuse for her violations and acted within its discretion in rejecting that excuse and activating defendant's suspended sentences. Accordingly, we affirm the judgments revoking probation.

Affirmed.

Judges HUNTER, Robert C., and McCULLOUGH concur.

Report per Rule 30(e).