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NO. COA11-981
NORTH CAROLINA COURT OF APPEALS

Filed: 19 June 2012

STATE OF NORTH CAROLINA

v.

Cumberland County
No. 10 CRS 7276

TYSHON MAURICE FISHER

Appeal by defendant from judgment entered 12 April 2011 by Judge Mary Ann Tally in Cumberland County Superior Court. Heard in the Court of Appeals 11 January 2012.

Attorney General Roy Cooper, by Assistant Attorney General Gaines M. Weaver, for the State.

Mary McCullers Reece for defendant-appellant.

BRYANT, Judge.

Where competent evidence supports the conclusion that defendant willfully violated the condition of his probation that he not possess any dogs for fighting purposes, the trial court did not err in revoking defendant's probation and activating his sentence. Where clerical errors exist in the written judgment

of the trial court, we remand for correction of these clerical errors.

Defendant was convicted of dogfighting on 23 April 2008 in Sampson County. Defendant was sentenced to an active term of ten to twelve months. The trial court suspended the active sentence and placed defendant on supervised probation for a period of thirty months to be monitored by officials in Cumberland County. The terms of defendant's probation required, among other things, that defendant not possess any dog for fighting purposes.

At the probation violation hearing, the evidence tended to show that a search was conducted on defendant's property by his probation officer. The search uncovered sixteen pit bulls, a hidden treadmill, miscellaneous paraphernalia used for fighting, a chicken used to entice the dogs into fighting, medicine and ointment to heal dog wounds, a catch pole to control the dogs, and a dog with injuries consistent with fighting.

After the hearing, the trial court concluded defendant had willfully violated the condition of his probation preventing him from possessing dogs for the purpose of fighting. The court then revoked defendant's probation and activated his suspended sentence of ten to twelve months. Defendant appeals.

On appeal, defendant argues the trial court erred in (I) finding that defendant violated a condition of his probation, and (II) entering a written judgment that does not accurately reflect the trial court's order.

I

Defendant first contends the trial court erred in finding he violated a condition of his probation, specifically that he not possess any dog for fighting purposes. We disagree.

In a probation violation hearing, "the burden of proof is upon the State to show that the defendant has violated one of the conditions of his probation." *State v. Seagraves*, 266 N.C. 112, 113, 145 S.E.2d 327, 329 (1965) (per curiam). However, the State is not required to prove "[a]n alleged violation by a defendant of a condition upon which his sentence is suspended . . . beyond a reasonable doubt." *State v. Tennant*, 141 N.C. App. 524, 526, 540 S.E.2d 807, 808 (2000) (citation omitted). "All that is required is that the evidence be sufficient to reasonably satisfy the judge in the exercise of his sound discretion that the defendant has willfully violated a valid condition of probation." *State v. White*, 129 N.C. App. 52, 58, 496 S.E.2d 842, 846 (1998) (citation omitted), *aff'd in part*, 350 N.C. 302, 512 S.E.2d 424 (1999). "The findings of the judge, if supported by competent evidence, and his judgment based thereon are not reviewable on appeal, unless there is a

manifest abuse of discretion." *State v. Guffey*, 253 N.C. 43, 45, 116 S.E.2d 148, 150 (1960) (citations omitted).

Upon his conviction for dogfighting in 2008, defendant was placed on supervised probation, which included a special condition that defendant not possess *any dog for fighting purposes*. However, after complaints of dog fighting in the area, defendant's probation officer accompanied by Cumberland County Animal Control Officers, located sixteen pit bulls while conducting a routine search of defendant's residence. And, in the woods "directly behind" defendant's property, officers located paraphernalia associated with dog fighting, including a rope hanging from a tree and a catchpole, a chicken, wound care chemicals, a shed with a treadmill inside, a dog pen containing alcohol and a protein supplement, weighted collars and a wooden tool for prying apart fighting dogs. The officers also discovered a homemade circle for dog fighting. Defendant acknowledged that a dog fighting operation existed on the premises but refused to reveal who else was involved.

Based on the totality of the evidence offered by the State, we deem it sufficient and competent to support the trial court's conclusion that defendant willfully violated the special condition of his probation forbidding him from possessing any dog for fighting purposes. Therefore, defendant's argument is overruled.

II

Next, defendant argues the trial court erred by entering a written judgment that inaccurately states defendant waived a violation hearing and admitted the alleged violations as well as incorporates the findings of the wrong probation violation report. We agree.

A clerical error is "[a]n error resulting from a minor mistake or inadvertence, esp. in writing or copying something on the record, and not from judicial reasoning or determination." *State v. Jarman*, 140 N.C. App. 198, 202, 535 S.E.2d 875, 878 (2000) (citation omitted). "It is universally recognized that a court of record has the inherent power and duty to make its records speak the truth. It has the power to amend its records, correct the mistakes of its clerk . . . , and no lapse of time will debar the court of the power to discharge this duty." *State v. Cannon*, 244 N.C. 399, 403, 94 S.E.2d 339, 342 (1956).

All parties agree that the trial court incorrectly checked a box in the Judgment and Commitment Upon Revocation of Probation Order stating that defendant had waived a violation hearing and admitted each of the conditions of probation when it should have checked the box stating, among other things, that a hearing was held. Further, the trial court incorrectly incorporated the findings of the probation violation report dated 16 February 2011 rather than the report from 14 March

2011. Accordingly, we remand for correction of these clerical errors. See *State v. Smith*, 188 N.C. App. 842, 845, 656 S.E.2d 695, 696 (2008) ("When, on appeal, a clerical error is discovered in the trial court's judgment or order, it is appropriate to remand the case to the trial court for correction because of the importance that the record 'speak the truth.'" (quoting *State v. Linemann*, 135 N.C. App. 734, 738, 522 S.E.2d 781, 784 (1999))).

Affirmed in part and remanded in part.

Judges ELMORE and ERVIN concur.

Report per Rule 30(e).