An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-1007

Filed: 17 April 2018

Davidson County, No. 12 CRS 4873

STATE OF NORTH CAROLINA

v.

CHRISTOPHER DEALI RICHBOURG

Appeal by defendant from judgment entered 25 May 2017 by Judge Stanley L. Allen in Davidson County Superior Court. Heard in the Court of Appeals 12 April 2018.

Attorney General Joshua H. Stein, by Assistant Attorney General William Walton, for the State.

Mary McCullers Reece for defendant-appellant.

ZACHARY, Judge.

Defendant Christopher Deali Richbourg appeals from a judgment revoking his probation and activating his suspended sentence.[1] We hold the trial court did not err

[1] Defendant's middle name appears in the record as "Delaine" on the indictment charging him with his crimes, the certificate of settlement of the record on appeal, defendant's appellate brief, and the State's brief; as "Dealin" on his original judgment; as "De" on the probation violation reports; as "Deali" on the judgment revoking his suspended sentence, appellate entries form, and order appointing

in concluding defendant had absconded from supervision and affirm the court's judgment.

On 3 December 2012, defendant was indicted for possession with intent to sell or deliver hydrocodone and selling hydrocodone, a Schedule II substance. Defendant pleaded guilty to selling a Schedule II substance, and on 24 January 2013 the trial court sentenced him to a suspended term of 8 to 19 months' imprisonment and placed him on supervised probation for 24 months.

Defendant's probation officer filed a violation report on 8 June 2014, alleging defendant had willfully violated:

> 1. Condition of Probation "Not use, possess or control any illegal drug or controlled substance unless it has been prescribed for the defendant by a licensed physician and is in the original container with the prescription number affixed on it . . ." in that THE DEFENDANT HAD THE FOLLOWING POSITIVE DRUG TESTS: 2/28/2013 FOR COCAINE AND 4/2/2013 FOR COCAINE AND MARIJUANA.
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> 2. Condition of Probation "The defendant shall pay to the Clerk of Superior Court the "Total Amount Due" as directed by the Court or probation officer" in that[] THE DEFENDANT HAS NOT MADE ANY PAYMENTS TOWARDS HIS CASE AND HAS A CURRENT BALANCE OF $1,495.00 AND IS IN ARREARS $1,200.00. PAYMENT PLAN BEGAN ON 3/20/2013.
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> 3. Condition of Probation "The defendant shall pay to the Clerk of Superior Court the monthly supervision fee as set by law" in that THE DEFENDANT HAS FAILED TO PAY

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him appellate counsel; and as "Delaney" in the transcript of the probation revocation hearing. For the sake of consistency, we use the middle name provided on the judgment from which defendant appeals.

> ANY MONEY TOWARDS HIS PROBATION SUPERVISION FEES AND IS CURRENTLY IN ARREARS $640.00. PAYMENT PLAN BEGAN ON 3/20/2013.
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> 4. Condition of Probation "Report for an initial evaluation as ordered . . ." in that THE DEFENDANT FAILED TO OBTAIN A SUBSTANCE ABUSE ASSESSMENT AND COMPLETE ANY REQUIRED TREATMENT. OFFENDER WAS REFERRED TO TASC ON 4/2/2013 AND FAILED TO EVER REPORT.

The notice on the report indicated the matter would be heard on 21 July 2014. Defendant, however, did not appear at the hearing, and the trial court issued a warrant for defendant's failure to appear. Defendant's hearing was apparently reset three times, with the last hearing scheduled for 20 November 2014, but defendant failed to appear at each hearing.

Defendant's probation officer filed a second violation report on 15 December 2014, alleging defendant had willfully violated:

> 1. Regular Condition of Probation: "Not to abscond, by willfully avoiding supervision or by willfully making the supervisee's whereabouts unknown to the supervising probation officer" in that, THE DEFENDANT FAILED TO APPEAR IN DAVIDSON COUNTY SUPERIOR COURT FOR HIS PROBATION VIOLATION ON 11/20/14. THE DEFENDANT [ALSO] REFUSED TO MEET WITH PPO AND AVOIDED SUPERVISION THUS MAKING THE DEFENDANT AN ABSCONDER.

The trial court held a hearing on the probation violation reports on 25 May 2017. After hearing evidence from defendant's probation officer, defendant, and

defendant's mother, the trial court found defendant had willfully violated the terms and conditions of his probation as alleged in both reports. The court entered judgment revoking defendant's probation based on his absconding from supervision, and activated defendant's suspended sentence of 8 to 19 months' imprisonment. Defendant gave oral notice of appeal at the close of the hearing.

Defendant now argues the trial court erred in concluding he absconded from supervision. Defendant contends that his failure to appear in court for his prior hearings and his missed meetings with his probation officer are not sufficient to support the court's conclusion. Defendant is mistaken.

A trial court's decision to revoke a defendant's probationary sentence "only requires 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" that qualifies as grounds for revocation. *State v. Young*, 190 N.C. App. 458, 459, 660 S.E.2d 574, 576 (2008) (citation and quotation marks omitted). "The [trial court's] finding of such a violation, if supported by competent evidence, will not be overturned absent a showing of manifest abuse of discretion." *Id.* (citation and quotation marks omitted).

A trial court may revoke a defendant's probation if the defendant absconds from supervision. N.C. Gen. Stat. § 15A-1344(a) (2017). Absconding is defined as

"willfully avoiding supervision or by willfully making the defendant's whereabouts unknown to the supervising probation officer[.]" N.C. Gen. Stat. § 15A-1343(b)(3a) (2017). This Court has held that a defendant's failure to report for a scheduled office visit "does not, without more, violate N.C. Gen. Stat. § 15A-1343(b)(3a) when [defendant's] exact actions violate the explicit language of a wholly separate regular condition of probation which does not allow for revocation and activation of a suspended sentence." *State v. Johnson*, ___ N.C. App. ___, ___, 783 S.E.2d 21, 26 (2016) (emphasis omitted).

Here, the evidence before the trial court established that defendant's actions constituted more than just missing scheduled office meetings. Defendant failed to appear at multiple scheduled hearings on his first probation violation report and failed to return multiple phone calls from his probation officer. Defendant's probation officer also testified that she went to meet with defendant at his home on 10 December 2014. Defendant, who lived with his mother, was not home, but the probation officer spoke with defendant on the phone and he stated he had just gotten off work and would be home at 6:00 p.m. Defendant did not return home at 6:00 p.m. and the probation officer waited outside defendant's home until 8:16 p.m. The probation officer then had defendant's mother call him, and defendant stated he would be home in 30 minutes. Defendant did not return home, and the probation officer and defendant's mother both attempted to call defendant, but he did not answer his

phone. After 10 December 2014, defendant only spoke with his probation officer on the phone, and his probation officer never knew his whereabouts. Defendant further testified at the hearing that he intentionally did not schedule any office appointments with his probation officer after the warrant for his arrest was issued on 20 November 2014 for his failure to appear.

We conclude defendant's actions go well beyond merely not appearing at scheduled office meetings and evince an intent to willfully avoid supervision. Accordingly, we hold the evidence supports the trial court's finding that defendant absconded from supervision and affirm the court's revocation of defendant's probation.

AFFIRMED.

Judges ELMORE and TYSON concur.

Report per Rule 30(e).