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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-1273

Filed: 19 June 2018

Harnett County, No. 15 CRS 50328

STATE OF NORTH CAROLINA

v.

RUBEN RAMIREZ

Appeal by defendant from judgment entered on or about 24 July 2017 by Judge Charles W. Gilchrist in Harnett County Superior Court. Heard in the Court of Appeals 15 May 2018.

Attorney General Joshua H. Stein, by Assistant Attorney General Ann Stone, for the State.

Morgan & Carter PLLC, by Michelle F. Lynch, for defendant-appellant.

ARROWOOD, Judge.

Ruben Ramirez ("defendant") appeals from judgment revoking his probation and activating his suspended sentences. For the reasons stated herein, we affirm.

I. Background

On 23 February 2016, defendant pleaded guilty to felonious breaking and entering under N.C. Gen. Stat. § 14-54(a) (2017) in Harnett County Superior Court,

the Honorable Jacquelyn L. Lee presiding. The trial court sentenced defendant to 6 to 17 months imprisonment, to be suspended on the condition of 12 months of supervised probation following his discharge from a five day active term in the custody of the Harnett County Sherriff. Defendant received credit for time served.

On 3 November 2016, defendant's probation officer filed a probation violation report, alleging defendant willfully violated two conditions of his probation by being in arrears in court indebtedness and in his supervision fees. The matter came on for hearing in Harnett County District Court before the Honorable Joy A. Jones. Defendant admitted the allegations in the probation violation report. On 20 December 2016, the court entered an order that continued defendant's probation for 12 months and ordered him to successfully complete an Integrated Behavioral Health Services ("IBHS") program for substance abuse. Defendant did not appeal.

On 30 March 2017, defendant's probation officer filed a violation report alleging defendant violated two conditions of his probation. First, the report alleged he violated the condition that he "[n]ot 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" because defendant was in possession of marijuana in a medicine bottle on 16 March 2017. Second, the report alleged defendant violated the condition that he "[c]ommit no criminal offense in any jurisdiction" when he was charged with

possession of marijuana up to a half ounce and possession of marijuana paraphernalia on 16 March 2017. Defendant's probation officer filed a third probation violation report on 18 April 2017, alleging that defendant violated the condition of his probation that he attend the IBHS class because he was terminated from the program due to being found in possession of marijuana at the class.

On 24 July 2017, the matter came on for hearing in Harnett County Superior Court, the Honorable Charles W. Gilchrist presiding. The State's evidence tended to show that, on 16 March 2017, defendant rode the bus to his IBHS class. The bus driver told the IBHS class instructor that defendant acted suspiciously on the bus, showing others something in his book bag. The instructor reported the incident to the probation office. Two probation officers were informed of defendant's actions. They spoke with the bus driver and the instructor. They then called defendant from the class, identified themselves, and told defendant they needed to search him and his bag because they suspected "he had something on him" and that he was engaged in an illegal activity. Defendant consented to the search. The bag contained marijuana in an unlabeled prescription bottle. Defendant admitted it was marijuana, and stated he was trying to get money for it because he lost his job. Law enforcement and defendant's supervising probation officer were notified.

Defendant moved to suppress the evidence of marijuana. The trial court denied that motion on 24 July 2017, signed, *nunc pro tunc*, on 25 September 2017 and

filed 29 September 2017. On 24 July 2017, the trial court found defendant willfully violated the terms and conditions of his probation. The trial court revoked defendant's probation and activated his suspended sentence.

Defendant appeals.

II. Discussion

Defendant argues the order extending his probation was invalid, so the trial court did not have subject matter jurisdiction to revoke his probation. He also argues that the trial court abused its discretion when it: (1) did not dismiss the probation violation charges, and (2) found that defendant willfully violated probation by failing to attend and complete the IBHS class.

A. Subject Matter Jurisdiction

Defendant argues the trial court lacked subject matter jurisdiction to revoke his probation on or about 24 July 2017 because the order that extended his term of probation from an end date of 23 February 2017 to 23 February 2018 was invalid.

"A party may raise the issue of subject matter jurisdiction at any time. Whether a trial court has subject-matter jurisdiction is a question of law, reviewed de novo on appeal." *State v. Regan*, __ N.C. App. __, __, 800 S.E.2d 436, 438 (2017) (citations and internal quotation marks omitted).

> The court may extend, modify, or revoke probation after the expiration of the period of probation if all of the following apply:

> (1) Before the expiration of the period of probation the State has filed a written violation report with the clerk indicating its intent to conduct a hearing on one or more violations of one or more conditions of probation.
>
> (2) The court finds that the probationer did violate one or more conditions of probation prior to the expiration of the period of probation.
>
> (3) The court *finds* for good cause shown and stated that the probation should be extended, modified, or revoked.
>
> (4) If the court opts to extend the period of probation, the court may extend the period of probation up to the maximum allowed under G.S. 15A-1342(a).

N.C. Gen. Stat. § 15A-1344(f) (2017) (emphasis added).

Defendant contends that the order extending his probation was invalid because the trial court failed to make a finding of good cause to revoke his probation pursuant to N.C. Gen. Stat. § 15A-1344(f)(3) or of defendant's consent to the extension pursuant to N.C. Gen. Stat. §§ 15A-1342(a), 15A-1343.2(d). Defendant's argument is nearly identical to the argument we rejected in *Regan*, and again in *State v. Morgan*, __ N.C. App. __, __ S.E.2d __, 2018 WL 1801540 (2018). In both *Regan* and *Morgan*, we held N.C. Gen. Stat. § 15A-1344(f) "does not require that the trial court make any *specific findings*." *Morgan*, 2018 WL 1801540 at *2; *Regan*, __ N.C. App. at __, 800 S.E.2d at 440. It is sufficient that the record reflects "that the trial court considered the

evidence and found good cause to revoke . . . probation." *Morgan*, 2018 WL 1801540 at *3 (quoting *Regan*, __ N.C. App. at __, 800 S.E.2d at 440-41).

Here, the record shows that defendant admitted the allegations in the violation report and the willfulness thereof before the trial court extended his probation. Accordingly, the order extending defendant's probation was not invalidated by the trial court's failure to make a specific finding of fact that his probation was extended for good cause, or with his consent, because the record reflects that the trial court found good cause to revoke defendant's probation from the evidence before the court. *See Morgan*, 2018 WL 1801540 at *2-3; *Regan*, __ N.C. App. at __, 800 S.E.2d at 440; *In re Appeal from Civil Penalty*, 324 N.C. 373, 384, 379 S.E.2d 30, 37 (1989) ("Where a panel of the Court of Appeals has decided the same issue, albeit in a different case, a subsequent panel of the same court is bound by that precedent, unless it has been overturned by a higher court.") (citations omitted). Therefore, the order extending defendant's probation was valid and the trial court had subject matter jurisdiction to revoke his probation.

B. Probation Violations

Defendant argues that the trial court abused its discretion in finding defendant in violation of his probation when: (1) the marijuana he possessed was discovered during a warrantless search in violation of N.C. Gen. Stat. § 15A-1343 (2017), and (2) the State failed to prove the substance was marijuana.

> A hearing 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.

State v. Young, 190 N.C. App. 458, 459, 660 S.E.2d 574, 576 (2008) (citation and internal quotation marks omitted). We review a trial court's decision to revoke probation only for "manifest abuse of discretion." *State v. Tennant,* 141 N.C. App. 524, 526, 540 S.E.2d 807, 808 (2000) (citation and internal quotation marks omitted).

First, we consider defendant's argument that there was insufficient evidence to support the charges because any evidence of marijuana should have been suppressed as a product of a warrantless search that was not for purposes directly related to probation supervision.

"The standard of review in evaluating the denial of a motion to suppress is whether competent evidence supports the trial court's findings of fact and whether the findings of fact support the conclusions of law." *State v. Jackson*, 368 N.C. 75, 78, 772 S.E.2d 847, 849 (2015) (citation and quotation marks omitted).

As a regular condition of probation a defendant must:

> Submit at reasonable times to warrantless searches by a probation officer of the probationer's person and of the probationer's vehicle and premises while the probationer is present, *for purposes directly related to the probation supervision*, but the probationer may not be required to submit to any other search that would otherwise be

unlawful.

N.C. Gen. Stat. § 15A-1343(b)(13) (2017) (emphasis added). We previously examined the plain meaning of "directly related" in *State v. Powell*, __ N.C. App. __, __, 800 S.E.2d 745, 751 (2017) because our statutes do not define this phrase. We noted that "[t]he word 'directly' has been defined as 'in unmistakable terms.' " *Id.* at __, 800 S.E.2d at 751 (citing Webster's Third New International Dictionary 641 (1966)).

Here, the trial court found that the probation officers searched defendant's book bag based on the bus driver's observations that defendant acted in a suspicious manner and showed others something in his bag while on a bus to his IBHS class. The two probation officers who were informed of defendant's suspicious actions called defendant from the class, identified themselves, and told defendant they needed to search him and his bag. Defendant consented to the search. The bag contained marijuana in an unlabeled prescription bottle. Defendant admitted it was marijuana, and stated he was trying to get money for it because he lost his job.

These circumstances are distinguishable from *Powell*, the case defendant relies on for this argument. In *Powell*, our Court held that a warrantless search of a probationer was not authorized under N.C. Gen. Stat. § 15A-1343(b)(13) because the State's evidence did not satisfy the burden of the "purpose" element. *Powell*, __ N.C. App. at __, 800 S.E.2d at 754. The burden to establish that the search was directly

related to the purpose of probation supervision was not met in *Powell* because the evidence in that case showed the officers that searched the defendant were

> part of an operation conducting searches of seven or eight residences of individuals who were on probation, parole, or post-release supervision in a particular geographic area . . . . The members of the task force utilized a list of probationers . . . that . . . target[ed] violent offenses involving firearms and drugs, . . . [and] not all offenders that were selected had that criteria.

Id. at __, 800 S.E.2d at 747 (internal citations, quotation marks, and alterations omitted). This dragnet search was without any particularized cause whatsoever, which failed to satisfy the "purpose" element of N.C. Gen. Stat. § 15A-1343(b)(13).

In contrast, here, the probation officers conduced a search due to a report of suspicious activity that led them to suspect defendant "had something on him" and was engaged in an illegal activity. In its order denying the motion to suppress, the trial court noted that, under N.C. Gen. Stat. § 15A-1343(b)(15), a defendant must "[n]ot to use, possess, or control any illegal drug or controlled substance" as a regular condition of probation. The trial court also found that defendant had been ordered not to possess any illegal drug as a condition of probation in defendant's judgment for breaking and entering. Given this condition, and as a result of defendant's suspicious behavior on the way to his IBHS substance abuse class, officers lawfully searched defendant under N.C. Gen. Stat. § 15A-1343(b)(13) for purposes directly related to defendant's probation supervision. Furthermore, the trial court also found the

officers searched defendant with his consent. Therefore, the trial court did not err by denying defendant's motion to suppress.

Defendant also contends that the State offered no real evidence of marijuana because the warrantless search was unlawful. However, we have held that the search was lawful. Additionally, defendant admitted the substance was marijuana, and a probation officer, who had seen, smelled, and identified unburnt marijuana before, testified that the substance was unburnt marijuana. Therefore, the evidence was such as could reasonably satisfy the judge in the exercise of his sound discretion that the defendant willfully violated a valid condition of probation by possessing marijuana and committing new criminal conduct. The trial court did not abuse its discretion.

C. Willful Failure to Attend the IBHS Class

For his final argument, defendant challenges the trial court's finding that he violated his probation by not attending the IBHS program. However, because we disagree with the arguments defendant raised with regard to his revocation for new criminal conduct, we need not address this argument. Under N.C. Gen. Stat. § 15A-1343(b)(1), a probation violation for new criminal conduct was, in and of itself, a sufficient basis upon which the trial court could revoke defendant's probation and activate his suspended sentence. *See, e.g., State v. Young*, 190 N.C. App. at 462, 660 S.E.2d at 577 (holding the court need not address an issue raised as to one probation

violation when another violation was sufficient for the court to revoke a defendant's probationary sentence).

III. Conclusion

For the forgoing reasons, we affirm the trial court's revocation of defendant's probation and the activation of his suspended sentence.

AFFIRMED.

Judges CALABRIA and MURPHY concur.

Report per Rule 30(e).