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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-1336

Filed: 3 July 2018

Beaufort County, No. 13CRS52488, 52729; 14CRS431, 556, 50923

STATE OF NORTH CAROLINA

v.

DESIREE PETERSON, Defendant.

Appeal by defendant from judgment entered on or about 10 July 2017 by Judge Wayland J. Sermons, Jr. in Superior Court, Beaufort County. Heard in the Court of Appeals 4 June 2018.

Attorney General Joshua H. Stein, by Assistant Attorney General Allison Angell, for the State.

Jeffrey William Gillette, for defendant-appellant.

STROUD, Judge.

Defendant appeals from the trial court's order revoking her probation for absconding. Because there was sufficient evidence defendant missed three office visits, could not be located, and failed to inform her probation officer of her whereabouts, the trial court did not err in concluding that she had absconded and revoking her probation.

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In May of 2017, defendant's probation officer filed a violation report in Beaufort County alleging defendant had absconded when she moved and failed to inform her probation officer. At the time of the report, defendant's probation officer could not locate her. On or about 10 July 2017, the district court revoked defendant's probation. Defendant appeals.

On appeal, defendant argues that her alleged violation for absconding arose from miscommunication. We note that some of the testimony is confusing and could be interpreted in different ways. Part of the confusion arises from the fact that defendant's conviction for which she was on probation originated in Beaufort County, but for a period of time she was supervised by Pitt County because she had reported she had moved there. Much of the testimony was about the communications between the probation officers in the two counties.

Chrystal Matthews of the North Carolina Department of Public Safety testified as defendant's probation officer who had filed the violation report in Beaufort County. Officer Matthews explained that defendant was released from a treatment facility in Black Mountain on 1 March 2017 and from the officer's "understanding, [defendant], was going to go to Pitt County to stay, and so she was being courtesy supervised[.]" Officer Matthews noted defendant missed three office visits in Pitt County in March and April, and then testified that Officer Tracy Gatling, of Pitt County, "did a home contact" at the address on Tyson Street that defendant had provided in Pitt County,

but defendant was not there. Officer Gatling told Officer Matthews defendant “had been kicked out of [the] Tyson Street address and was living at . . . Ward Street[;]” as best we can tell from the transcript, this address was also in Pitt County, although she did not state the town for this address.

On 8 May Officer Matthews was informed that defendant “had come back to Belhaven to stay with her mom” so she was back in Beaufort County and was “turn[ed] . . . over” again to Officer Matthews. Officer Matthews visited defendant’s mother’s address in Belhaven twice and left her contact information, but never heard from defendant. On 1 June, defendant “was picked up by the U.S. Marshal in Pitt County.”

Defendant argues there was no evidence she had absconded and contends “she continued to reside at her last known address [in Pitt County] and could have been found there by her probation officer at any time.” She argues the State failed to prove “she was willfully making her whereabouts unknown to her probation officer” and therefore “[t]he evidence presented at trial failed to establish that Ms. Peterson absconded[.]”

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. The judge’s finding of such a violation, if supported by competent evidence, will not be

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overturned absent a showing of manifest abuse of discretion.

State v. Jones, 225 N.C. App. 181, 183, 736 S.E.2d 634, 636 (2013) (citation omitted).

“As regular conditions of probation, a defendant must . . . [n]ot abscond by willfully avoiding supervision or by willfully making the defendant’s whereabouts unknown to the supervising probation officer, if the defendant is placed on supervised probation.” N.C. Gen. Stat. § 15A-1343 (2017).

Defendant attempts to compare her case to cases where “a probationer . . . informed his supervising officer that he would not attend a required office visit” and contends that “failure to attend office visits and travel outside of the jurisdiction, standing alone” is not enough to establish absconding. But here, the State’s evidence showed that between April 27 and June 1, defendant’s probation officer did not know where defendant was living and could not locate her. Defendant’s probation officer testified defendant failed to attend three of her scheduled office visits. At least two times, law enforcement officers went to defendant’s mother’s address in Beaufort County, where she had last told another probation officer she was staying, but defendant was not there. On 1 June, defendant was picked up by a U.S. Marshal in Pitt County.

Defendant contends that she never moved away from her Pitt County address but was merely visiting her mother in Beaufort County, so if someone had visited the Pitt County address she would have been found. Defendant argues that the probation

officer misunderstood her because she did not say that she was moving to Beaufort County but only that she would be visiting there a few days. But the Pitt County officer had attempted to find her at the Pitt County address and understood that defendant had been “kicked out” of her residence in Pitt County and would not be returning to it. We agree that one possible interpretation of the evidence is miscommunication between defendant and the probation officers or between the probation officers, but it can also be interpreted to support the trial court’s conclusion of absconding. It is the trial court’s role, and not ours, to evaluate the credibility and weight of the evidence. *See generally Coble v. Coble*, 300 N.C. 708, 712–713, 268 S.E.2d 185, 189 (1980) (“The trial court must itself determine what pertinent facts are actually established by the evidence before it, and it is not for an appellate court to determine *de novo* the weight and credibility to be given to evidence disclosed by the record on appeal.”). In addition, there is no dispute that defendant missed three office visits; did not inform her own probation officer why she missed her visits; could not be found at the address she had most recently provided – whether she was visiting or living there; and she failed to contact any probation officer in either county between early May and June 1st when she was located by a U.S. Marshal.

This case is similar to *State v. Trent*, where the defendant took a job out of town but failed to inform his probation officer and the officer was unable to find him at his address:

The instant case is distinguishable from *Johnson* and *Williams* for the simple, but significant, fact that Officer Russell was never aware of defendant's whereabouts after he left Randleman on 23 April 2016. When defendant accepted an eight-day painting job in Raleigh, he failed to notify Officer Russell of his employment opportunity prior to traveling. As a result, Officer Russell was unaware that defendant would not be in Randleman when she made her first unscheduled visit to his residence on 24 April 2016. Upon her arrival, Officer Russell met defendant's wife, Kim, who was very upset. Kim told Officer Russell that she had not seen defendant since the previous day, when he took her car and bank card without permission and left the residence. These allegations prompted Officer Russell's second unscheduled visit less than two weeks later. When Officer Russell revisited the residence on 5 May 2016, Kim said that defendant still had not returned, and she did not know where he was. Consequently, on 9 May 2016, Officer Russell filed violation reports.

State v. Trent, ___ N.C. App. ___, ___, 803 S.E.2d 224, 230–31 (2017) (quotation marks omitted), *writ of supersedeas denied and disc. review denied*, ___ N.C. ___, 809 S.E.2d 599 (2018). Though the facts here differ from *Trent*, there also is the “the simple, but significant fact that [defendant's officer] was never aware of defendant's whereabouts” for the entire month of May. *Id.* at ___, 809 S.E.2d at 230. We conclude there was competent evidence that defendant absconded, and the trial court did not abuse its discretion in revoking probation. *See Jones*, 225 N.C. App. at 183, 736 S.E.2d at 636. This argument is overruled.

We affirm.

AFFIRMED.

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Chief Judge McGEE and Judge BRYANT concur.

Report per Rule 30(e).