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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-140

Filed: 17 July 2018

Wayne County, Nos. 14 CRS 52193; 15 CRS 51808

STATE OF NORTH CAROLINA

v.

JACQUARIUS S. HOWELL

Appeal by defendant from judgment entered 5 September 2017 by Judge William W. Bland in Wayne County Superior Court. Heard in the Court of Appeals 16 July 2018.

Attorney General Joshua H. Stein, by Assistant Attorney General Phyllis A. Turner, for the State.

The Epstein Law Firm PLLC, by Drew Nelson, for defendant-appellant.

DAVIS, Judge.

Jacquarius S. Howell (“Defendant”) appeals from the trial court’s judgment revoking his probation and activating his suspended sentence. After a thorough review of the record and applicable law, we affirm.

Factual and Procedural Background

On 13 June 2016, Defendant entered a guilty plea to two counts of second-degree murder. The trial court consolidated Defendant's convictions into a single judgment and sentenced him to a term of 29 to 47 months imprisonment. The sentence was suspended, and Defendant was placed on supervised probation for 60 months.

Defendant's probation officer filed a violation report on 15 September 2016 alleging that Defendant had violated six conditions of his probation, including absconding, testing positive for marijuana, failing to report to scheduled office visits, failing to pay court costs, failing to pay supervision fees, and failing to obtain prior approval for — and notify the officer of — any change in address. A probation revocation hearing was held on 5 September 2017 before the Honorable William W. Bland in Wayne County Superior Court. The trial court concluded that Defendant had willfully violated the conditions of his probation as alleged in the report. The court entered a judgment revoking Defendant's probation and activating his suspended sentence. Defendant gave notice of appeal in open court.

Analysis

On appeal, Defendant argues that (1) the trial court's findings of fact were insufficient to support its conclusion of law that he had absconded from supervision; and (2) the trial court made a clerical error in its 5 September 2017 judgment. We address each argument in turn.

I. Sufficiency of Findings of Fact

Defendant first argues the superior court’s findings of fact are insufficient to support its conclusion that he absconded from supervision. We disagree.

“We review the revocation of probation for an abuse of discretion.” *State v. Miller*, 205 N.C. App. 291, 293, 695 S.E.2d 149, 150 (2010) (citation omitted). Under an abuse of discretion standard, “we review to determine whether a decision is manifestly unsupported by reason, or so arbitrary that it could not have been the result of a reasoned decision.” *Brewer v. Hunter*, 236 N.C. App. 1, 8, 762 S.E.2d 654, 658 (citation and quotation marks omitted), *disc. review dismissed*, 367 N.C. 800, 766 S.E.2d 679 (2014).

It is well established that “[t]he minimum requirements of due process in a final probation revocation hearing shall include a written judgment by the trial court which shall contain (a) findings of fact as to the evidence relied on, and (b) reasons for revoking probation.” *State v. Johnson*, 246 N.C. App. 132, 136, 782 S.E.2d 549, 552 (2016) (citation, quotation marks, ellipsis, and brackets omitted). In *Johnson*, the trial court found that the defendant had violated each of the conditions of his probation alleged in the violation reports. *Id.* at 134, 782 S.E.2d at 554. This Court characterized the specific violations in *Johnson* as:

- (1) moving from his place of residence without obtaining prior permission and failing to notify his supervising officer;
- (2) failing to report for scheduled appointments on 20 March 2014, 24 March 2014, and 28 March 2014;
- (3)

being in arrears in the amount of \$587.00 for his court indebtedness; and (4) being in arrears in the amount of \$360.00 for his probation supervision fees. The violation reports also stated: “Furthermore, the Defendant has failed to make his whereabouts known to the probation department therefore the Defendant is declared an absconder.”

Id. at 133, 782 S.E.2d at 551. In affirming the revocation of the defendant’s probation in *Johnson*, this Court concluded that “[t]he trial court’s findings of fact were sufficient to support the trial court’s conclusion and decision to revoke Defendant’s probation.” *Id.* at 138, 782 S.E.2d at 554.

We have since reaffirmed our holding in *Johnson*. *See, e.g., State v. Trent*, __ N.C. App. __, __, 803 S.E.2d 224, 226-27, 232 (2017) (findings of fact that defendant’s “whereabouts are unknown” and that he had “failed to notify his probation officer of any change in address and did not have permission to move” were sufficient to support conclusion that he had absconded from supervision), *cert. denied*, __ N.C. __, 809 S.E.2d 599 (2018).

Here, the trial court found that Defendant willfully violated the terms and conditions of his probation as alleged in each of the paragraphs of the 15 September 2016 violation report and that it could revoke Defendant’s probation for the willful violation of the condition that he not abscond from supervision. *See* N.C. Gen. Stat. § 15A-1343(b)(3a) (2017). The allegation in the violation report that Defendant absconded from supervision states as follows:

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 OFFENDER DOES NOT RESIDE AT 1716-A TOMMY’S ROAD, GOLDSBORO, NC, 27534. ALL ATTEMPTS TO LOCATE THE OFFENDER HAVE FAILED. LAST CONTACT OCCURRED ON AUGUST 9TH 2016. OFFENDER IS WILLFULLY AVOIDING SUPERVISION. OFFENDER HAS ABSCONDED SUPERVISION.

Defendant claims this allegation — which was adopted as a finding by the trial court — sets forth only a violation of the regular condition of probation that he notify his probation officer of any change in address. However, this finding established that Defendant not only moved from his place of residence without notifying, or obtaining prior permission from, his probation officer but also failed to make his whereabouts known to his probation officer and willfully avoided supervision for over one month. As in *Johnson*, we conclude that this finding of fact was sufficient to support the trial court’s decision to revoke Defendant’s probation based on absconding. *See* N.C. Gen. Stat. § 15A-1344(a) (2017).

II. Clerical Error

Defendant also argues that the trial judge erred by failing to amend his written judgment after he made statements in open court indicating that he would do so. However, because we conclude that the court’s inaction would constitute a judicial error — as opposed to a clerical error — Defendant’s argument is misplaced.

“Clerical error has been defined as an error resulting from a minor mistake or inadvertence, esp[ecially] in writing or copying something on the record, and not from judicial reasoning or determination.” *State v. Taylor*, 156 N.C. App. 172, 177, 576 S.E.2d 114, 117-18 (2003) (citations, quotation marks, and alteration omitted). “[A] court of record has the inherent power to make its records speak the truth and, to that end, to amend its records to correct clerical mistakes or supply defects or omissions therein.” *State v. Jarman*, 140 N.C. App. 198, 202, 535 S.E.2d 875, 878 (2000). However, “it cannot, under the guise of an amendment of its records, correct a judicial error[.]” *Id.*

On 5 September 2017, the trial court determined that Defendant had willfully violated his probation conditions based on all six of the alleged violations in the probation violation report. The trial court incorporated all six of these findings in the judgment, which was entered that same day.

On 6 September 2017, the trial court announced in open court:

I did come back and I said something about this when I can [sic] came back yesterday, and I’ll just say it again, we had talked about -- I talked about finding the financial failures -- well, the financial related probation violations, not to be willful. During the conversation we had yesterday morning I sort of changed that. I’m going to change it back and find those things not to be willful. I do find all the other violations that we found to be willful, but as to the ones relating to paying the probation fees and that sort of thing, the ones that had the financial aspect, at the time of the violation report, which was September 20 . . . it was late September of 2016.

. . . .

At that time I don't find them to be willful, and just to be clear in terms of just the standard, the Court was reasonably satisfied as to the willfulness of all the other violations, in that they were, in fact, violations of his probation.

The trial court's announcement was made after entry of its 5 September 2017 judgment finding that Defendant had willfully committed all of the violations alleged in the probation violation report and after Defendant had given oral notice of appeal from the court's judgment. Based on its 6 September 2017 statement, it appears that the court intended to amend its judgment to find only Defendant's violations of the "non-monetary" conditions of his probation to be willful violations. However, the court never entered an amended judgment.

Nevertheless, the trial court's 5 September 2017 judgment revoking Defendant's probation was properly entered in accordance with the court's findings and conclusions at the close of the probation revocation hearing. The court's failure to enter an amended judgment in this case is thus a judicial error and does not constitute a clerical error resulting from a minor mistake or inadvertence. Accordingly, we overrule Defendant's argument.

Conclusion

For the reasons stated above, we affirm Defendant's convictions.

AFFIRMED.

STATE V. HOWELL

Opinion of the Court

Judges CALABRIA and BERGER concur.

Report per Rule 30(e).