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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-68

Filed: 6 November 2018

Wilkes County, Nos. 16 CRS 51364, 51647

STATE OF NORTH CAROLINA

v.

RANDALL MANWELL MASH

Appeal by defendant from judgment entered 7 September 2017 by Judge Julia S. Gullett in Wilkes County Superior Court. Heard in the Court of Appeals 20 August 2018.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Gwenda Laws, for the State.

Lisa A. Bakale-Wise for defendant.

DIETZ, Judge.

Defendant Randall Manwell Mash appeals a judgment revoking his supervised probation and activating his sentence on convictions for breaking and entering, assault and battery, and larceny. The trial court found that Mash absconded after he informed his probation officer that he was evicted from his last known address, failed to respond to the officer's phone calls, and forcibly removed his ankle monitor to avoid

supervision. As explained below, the trial court properly determined that Mash absconded and we therefore affirm the court's judgment.

Facts and Procedural History

On 29 March 2017, Defendant Randall Mash entered an *Alford* plea to two charges of misdemeanor larceny, one charge of felony breaking and entering, and one charge of misdemeanor assault and battery. Mash was sentenced to 15 to 27 months of imprisonment, but his sentence was suspended to 18 months of supervised probation and a thirty-day active term in jail. Mash was required to wear an ankle monitor while on probation.

On 29 July 2017, Mash left a voicemail for his probation officer, Officer Steven Workman, saying "Steve, man, I've been evicted and misplaced. I don't know what I'm going to do, don't know where I'm gonna go." Officer Workman tried to "call back numerous times" and "left numerous voicemails" for Mash, but Mash did not return his calls. Officer Workman traced the location of Mash's ankle monitor to Mash's father's mobile home, which was several miles from Mash's last known address.

Officer Workman and another officer visited the mobile home to investigate. Mash's father spoke with the officers, saying that Mash "had been there but had left in a panic" after "freaking out because he didn't know what he was gonna do." Eventually, the officers found Mash's ankle monitor hidden in the bushes of the flower garden outside the home, but the straps on the device had been damaged. The

officers later found the ripped-off pieces of strap at Mash's former residence. Not long after discovering the torn-off ankle monitor, Mash's girlfriend left Officer Workman a voicemail, asking him to call Mash and "consider not revocation because he had made a mistake and he was sorry." Officer Workman returned her call, but no one answered.

Officer Workman issued a warrant for Mash's arrest and filed a report alleging that Mash violated four conditions of his probation by: (1) absconding in violation of N.C. Gen. Stat. § 15A-1343(b)(3a); (2) failing to pay attorney fees, restitution and costs; (3) failing to pay supervision fees; and (4) committing the crime of felony interference with an electronic monitoring device, thereby violating N.C. Gen. Stat. § 15A-1343(b)(1).

Following a hearing, the trial court revoked Mash's probation and reactivated his sentence, stating that it was "reasonably satisfied that the Defendant . . . violated the terms and conditions of probation, [and] the Court does find that he absconded not only by moving without notifying the probation officer of the new address, but removing his ankle monitor making himself unavailable for supervision." Beyond stating that Mash violated the "terms and conditions" of his probation, the trial court did not specifically mention the other three probation violations alleged in Officer Workman's report in its oral ruling. In the Judgment and Commitment form, the trial court checked boxes indicating that Mash violated all four conditions alleged in the

report and that "[e]ach violation is, in and of itself, a sufficient basis upon which this Court should revoke probation and activate the suspended sentence." Mash timely appealed.

Analysis

I. Absconding from Supervision

Mash first challenges the trial court's finding that he willfully absconded. We review the trial court's judgment for abuse of discretion. *State v. Young*, 190 N.C. App. 458, 459, 660 S.E.2d 574, 576 (2008).

A trial court may revoke probation under N.C. Gen. Stat. § 15A-1344(a) when the defendant absconds from supervision by "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).

Mash contends that his behavior did not constitute absconding because "he did not miss any [probation] appointments, leave the jurisdiction, or make himself unavailable by phone for more than one day." Mash contrasts his situation with a series of cases from this Court involving probationers who were missing for many weeks or even months. *See*, *e.g.*, *State v. Trent*, __ N.C. App. __, __, 803 S.E.2d 224, 231 (2017); *State v. Johnson*, 246 N.C. App. 132, 137, 782 S.E.2d 549, 553 (2016).

We reject this argument because there is no minimum amount of time that a probationer's whereabouts must be unknown to constitute absconding. All that is

necessary is that the "evidence be such as to reasonably satisfy the judge in the exercise of his sound discretion" that Mash willfully made his whereabouts unknown to his supervising probation officer. *Young*, 190 N.C. App. at 459, 660 S.E.2d at 576; N.C. Gen. Stat. § 15A-1343.

Here, Mash told his probation officer that he was forced to leave his previous residence but did not tell the officer where he could be located and did not return the officer's calls. Law enforcement later discovered that Mash's ankle monitor has been forcibly removed, with the monitor itself hidden in some bushes in the garden of Mash's father's home and pieces of torn strap found at Mash's previous residence. The same day that the officers discovered the abandoned ankle monitor, Mash's girlfriend called his probation officer and left a message asking the officer to "consider not revocation because [Mash] had made a mistake and he was sorry."

Taken together, this evidence readily supports the trial court's determination that Mash willfully removed his ankle monitor to avoid supervision and make his whereabouts unknown to his supervising probation officer. Accordingly, the trial court's decision to revoke Mash's probation on this basis was well within the court's sound discretion. *State v. Hennis*, 323 N.C. 279, 285, 372 S.E.2d 523, 527 (1988).

II. Revocation on Other Grounds

Mash next argues that the trial court erred by revoking his probation on additional grounds. In its written judgment, the trial court found that Mash violated

four conditions of his probation and the court checked a box on the judgment form indicating that each violation provided a sufficient basis, standing alone, to justify revocation. Mash contends that the court's written findings concerning violations other than absconding are clerical errors because the court's oral ruling only concerned the allegations of absconding.

To be sure, this Court has held that where the trial court's written judgment varies from its oral ruling at trial, the variance is a "clerical error" requiring the case to be remanded to correct the error. *See, e.g., Trent*, __ N.C. App. at __, 803 S.E.2d at 232–33; *State v. Jones*, 225 N.C. App. 181, 185–87, 736 S.E.2d 634, 637–38 (2013). But there was no clerical error here.

At the start of the hearing, the State informed the court that it was pursuing all four alleged violations contained in the probation violation report. The State also presented evidence, including both the written report and testimony from Mash's probation officer, that supported these allegations. After reviewing the State's evidence, the trial court detailed its finding that Mash absconded but also found that Mash "violated the *terms* and *conditions*" of his probation, indicating that its determination was not limited to the allegation of absconding. The court's written judgment confirmed that the court found Mash violated all four conditions of his probation—in other words, the written judgment is consistent with the court's oral ruling.

As for the trial court's finding that each violation, standing alone, was sufficient to justify revocation, we need not address Mash's argument because the court's finding concerning absconding permitted revocation under the Justice Reinvestment Act. *See* N.C. Gen. Stat. § 15A-1344(a). Because the court determined that the absconding violation, standing alone, supported revocation, its statement on the written judgment form that it also revoked based on other violations was harmless. *Young*, 190 N.C. App. at 459, 660 S.E.2d at 576; *State v. Jones*, 232 N.C. App. 523, 757 S.E.2d 526 (2014).

Conclusion

We affirm the trial court's judgment revoking Mash's probation.

AFFIRMED.

Chief Judge McGEE and Judge CALABRIA concur.

Report per Rule 30(e).