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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-328

Filed: 5 November 2019

Anson County, No. 17 CRS 50292

STATE OF NORTH CAROLINA

v.

WILLIAM LEWIS MURRAY, Defendant.

Appeal by defendant from judgment entered 23 October 2018 by Judge Robert F. Floyd in Anson County Superior Court. Heard in the Court of Appeals 2 October 2019.

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

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

YOUNG, Judge.

Where the State presented sufficient competent evidence to show that defendant willfully violated N.C. Gen. Stat. § 15A-1343(b)(3a), the trial court did not abuse its discretion in finding that defendant willfully absconded from supervision, and in revoking his probation on that basis. Because the record does not contain a written civil judgment from which defendant purports to appeal, we lack subject

matter jurisdiction over that civil judgment and dismiss defendant's appeal therefrom. We find no error in part and dismiss in part.

I. Factual and Procedural Background

On 17 April 2018, a trial court sentenced William Lewis Murray (defendant) on the charges of second-degree burglary and habitual larceny. The court suspended defendant's sentence, and placed him on supervised probation for 36 months. On 5 June 2018, the magistrate issued an order for defendant's arrest, alleging a probation violation. The probation violation report, dated 29 May 2018, alleged that defendant absconded from his residence and made himself unavailable to his probation officer, that he missed his curfew on three separate days, that he failed to report to a scheduled probation appointment, that he failed to obtain approval for a change in address or notify officers of same, and that defendant allowed his electronic monitoring device battery to die and did not recharge it.

Subsequent to a hearing, the trial court revoked defendant's probation and activated his suspended sentences. Additionally, the court ordered that "[a]ny monies that are now owed will be reduced to a civil judgment[.]" The trial court entered its judgment on defendant's revocation of probation, and made note of the civil money judgment accordingly.

Defendant gave oral notice of appeal from the probation revocation judgment.

II. Revocation of Probation

In his first and second arguments, defendant contends that the trial court erred in revoking his probation. We disagree.

A. Standard of Review

> 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 overturned absent a showing of manifest abuse of discretion.

State v. Young, 190 N.C. App. 458, 459, 660 S.E.2d 574, 576 (2008) (citations and quotation marks omitted).

B. Impermissible Revocation

Defendant first contends that the trial court erred in revoking his probation based upon his failure to notify officers of an address change. Defendant notes that failure to notify officers of an address change is a violation of N.C. Gen. Stat. § 15A-1343(b)(3), which provides in relevant part that as a regular condition of probation, a defendant must "obtain prior approval from the officer for, and notify the officer of, any change in address or employment." N.C. Gen. Stat. § 15A-1343(b)(3) (2017). Defendant argues, however, that a violation of this statutory provision does not permit the revocation of probation.

Defendant is correct. While there are many conditions of probation enumerated in N.C. Gen. Stat. § 15A-1343, only certain ones are grounds for immediate revocation of probation. Specifically, a trial court may only revoke probation if the defendant has either committed a criminal offense or willfully absconded, or if a defendant has already received two confinements in response to violation (CRVs). N.C. Gen. Stat. § 15A-1344(a) (2017). Indeed, this Court has held that, where a person has not committed a new criminal offense, has not willfully absconded, and has not served any CRVs, revocation is not proper. *See State v. Nolen*, 228 N.C. App. 203, 206, 743 S.E.2d 729, 731 (2013).

However, defendant was not only charged with violating N.C. Gen. Stat. § 15A-1343(b)(3), which concerns failure to notify officers of an address change. He was also charged with violating N.C. Gen. Stat. § 15A-1343(b)(3a), which concerns willfully absconding. And as noted above, willful absconding forms a permissible basis for the revocation of probation. Thus, pursuant to our standard of review, we need only review whether the trial court abused its discretion in determining that defendant violated this term of his probation.

C. Substantial Evidence

Defendant next contends that the trial court lacked substantial evidence that he absconded from supervision. Accordingly, he argues, the trial court's activation of defendant's suspended sentence was an abuse of discretion.

To show a violation of a condition of probation, the State must present "substantial evidence of sufficient probative force to generate in the minds of reasonable men the conclusion that defendant has in fact breached the condition in question." *State v. Millner*, 240 N.C. 602, 605, 83 S.E.2d 546, 548 (1954). In the case of willful absconding, this means that the State must show that defendant "willfully avoid[ed] supervision or . . . willfully ma[de] the defendant's whereabouts unknown to the supervising probation officer[.]" N.C. Gen. Stat. § 15A-1343(b)(3a). Defendant contends that this is not the case, and that he in fact attempted to notify his probation officer of his change in address.

The record and testimony reveal the following facts. On 23 May 2018, defendant left his residence without prior approval or permission. He had resided with his sister, at an address provided by defendant to law enforcement. Law enforcement was not aware of his absence until officers came to check on his battery-dead ankle monitor, at which time his sister informed officers that defendant "was not there and hadn't been there for several days." Likewise, defendant had an appointment with officers on 29 May 2018, which he did not attend. The testifying officer acknowledged that, at a previous appointment, defendant had "stated he wanted to go to a residence in Charlotte," but she informed defendant that he had to give notice of the address prior to relocating.

Defendant testified in his own defense, claiming that his probation officer had approved him to go to a job interview in Mecklenburg. He claimed that he had repeatedly given his probation officer notice of a new address, a halfway house where he would live while working at the new job, but that she had denied the address. He went anyway, and when he got to the new address, they informed him he could not have an ankle monitor, so he cut it off. He noted that he contacted his probation officer on Facebook, due to his lack of a telephone. On cross-examination, defendant conceded that his probation officer did not approve of his proposed new address, and that he was aware that he had to obtain approval of any change in address. On redirect, the probation officer acknowledged that defendant had given her an address, but that the address was not a residence. The officer insisted that she could not approve an address that was not "a stable residence with an applicable address." She further testified that defendant did not mention at the time that it was a halfway house, and that she informed him that she could approve an address if it was a stable residence. The officer also acknowledged that defendant attempted to contact her on Facebook, but cited department policy "that we can't have any contact with people on Facebook, so it's automatically deleted."

Ultimately, defendant's testimony was not inconsistent with that of his probation officer. Defendant received permission to go to a job interview in Charlotte. He provided a proposed address in Charlotte, which the officer denied because it was

not "a stable residence with an applicable address." Defendant also removed his ankle monitor, and failed to attend his scheduled appointment. None of these facts are in dispute.

Notwithstanding defendant's claim that the evidence shows his desire to share an address with his probation officer, the transcript shows quite clearly that defendant's request to relocate was not approved. Moreover, unlike the cases defendant cites in his defense, defendant did not maintain contact with his probation officer. The trial court acknowledged this problem, noting that if the defendant had simply kept in contact with officers, he probably would not be facing an absconding violation.

We acknowledge this as well. Had defendant maintained contact with his probation officer and kept his ankle monitor on and charged, it seems unlikely that the evidence would have supported an absconding violation. Our past decisions confirm this. *See State v. Johnson*, 246 N.C. App. 139, 146, 783 S.E.2d 21, 26 (2016) (holding that, where defendant informed officers that he could not attend an appointment, and defendant was tracked by electronic monitoring, his "whereabouts" were not "unknown" to officers, and he did not willfully abscond); *State v. Williams*, 243 N.C. App. 198, 205, 776 S.E.2d 741, 746 (2015) (holding that, where defendant left the jurisdiction but remained in contact with officers and notified them of his whereabouts, he did not willfully abscond).

However, our past decisions also confirm that, where a defendant fails to maintain any contact with officers, and instead merely departs without providing any notice of his location, this may support a determination of willful absconding. We dealt with similar facts in *State v. Trent*, 254 N.C. App. 809, 803 S.E.2d 224 (2017), *disc. review denied*, 370 N.C. 576, 809 S.E.2d 599 (2018). In *Trent*, the defendant informed his probation officer of a change in address. When the officer made an unannounced visit to the new address, however, the defendant was not home, and his wife indicated that she had not seen him since the previous day, when he took her car and bank card and left the residence. The officer returned later to find the defendant still missing, and the defendant did not arrive for his scheduled appointment with the officer. Later, the officer discovered that the defendant had been arrested, and the defendant's probation was ultimately revoked for absconding.

On appeal, this Court distinguished *Johnson* and *Williams*, noting that unlike in those cases, the probation officer in *Trent* "was never aware of defendant's whereabouts after he left" the new home. *Id.* at 818, 803 S.E.2d at 230. The defendant accepted a job elsewhere and failed to notify his probation officer, and as a result, the officer "was unaware that defendant would not be in Randleman when she made her first unscheduled visit to his residence[.]" *Id.* We noted that, "unlike the officer in *Johnson*, however, [the probation officer] did not have the benefit of tracking defendant's movements via electronic monitoring device[,]" and "unlike in *Williams*,

[the probation officer] had absolutely no means of contacting defendant during his unauthorized trip[.]" *Id.* at 818-19, 803 S.E.2d at 231. We further held that, "[d]espite the fact that he did not have a phone, it was defendant's responsibility to keep his probation officer apprised of his whereabouts." *Id.* at 821, 803 S.E.2d at 232. We therefore held that there was "sufficient competent evidence to establish defendant's willful violation of N.C. Gen. Stat. § 15A-1343(b)(3a), a valid condition of his probation. Therefore, the trial court did not abuse its discretion in finding that defendant willfully absconded from supervision, or in revoking his probation on that basis." *Id.*

We hold that the instant case is more analogous to *Trent* than to *Johnson* or *Williams*. Unlike in *Johnson*, officers could not track defendant via electronic monitoring, because he allowed the battery to die and then removed the device. Unlike in *Williams*, defendant's probation officer could not contact defendant to ascertain his whereabouts. The burden was on defendant to provide notice of his whereabouts to officers, and his attempts to use Facebook to contact them were not sufficient, given department policy. Nor, per our decision in *Trent*, did defendant's lack of a phone excuse his failure to provide notice.

As we did in *Trent*, we hold that the undisputed testimony at trial, which showed that defendant moved to Charlotte without notifying officers or providing them with the means to contact him or a suitable address at which he could be found,

showed a willful violation of N.C. Gen. Stat. § 15A-1343(b)(3a), a valid condition of his probation. Accordingly, we hold that the trial court did not abuse its discretion in finding that defendant willfully absconded from supervision, or in revoking his probation on that basis.

III. Civil Judgment

In his third argument, defendant contends that the trial court erred in entering a civil judgment. Defendant acknowledges that he did not enter timely written notice of appeal of this judgment, and has filed a petition for writ of certiorari with this Court. In addition, the State has filed a motion to dismiss defendant's appeal of this judgment.

The State notes, and we acknowledge, that nowhere in the record on appeal or in defendant's petition does defendant include the written order on civil judgment. Our Supreme Court has held that, where no written civil judgment appears in the record, this Court is without subject matter jurisdiction to hear an appeal therefrom. *State v. Jacobs*, 361 N.C. 565, 566, 648 S.E.2d 841, 842 (2007); *see also* N.C.R. App. P. 3(d) (requiring that notice of appeal designate the judgment or order from which appeal is taken); N.C.R. App. P. 9(a)(1)(h) (requiring that the record on appeal contain a copy of the judgment or order from which appeal is taken). Accordingly, we hold that, absent a written judgment in the record, this Court lacks subject matter jurisdiction to hear defendant's appeal therefrom. We deny defendant's petition for

writ of certiorari and grant the State's motion to dismiss, solely with respect to this issue.

AFFIRMED IN PART, DISMISSED IN PART.

Judges STROUD and DILLON concur.

Report per Rule 30(e).