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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-645

Filed: 21 April 2020

Randolph County, Nos. 15 CRS 055688; 16 CRS 051293

STATE OF NORTH CAROLINA

v.

CHRISTOPHER DALE HICKS

Appeal by Defendant from Judgments entered 11 February 2019 by Judge Michael A. Stone in Randolph County Superior Court. Heard in the Court of Appeals 22 January 2020.

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

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Heidi Reiner, for defendant-appellant.

HAMPSON, Judge.

Factual and Procedural Background

Christopher Dale Hicks (Defendant) appeals from separate Judgments revoking his probation in Randolph County file numbers 15 CRS 055688 (15 CRS

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055688 Judgment) and 16 CRS 051293 (16 CRS 051293 Judgment). The Record before us tends to show the following:

On 11 October 2016, pursuant to a plea agreement, Defendant pleaded guilty in Randolph County Superior Court to eight separate charges involving breaking and entering, possession of stolen goods, and obtaining property by false pretense. The same day, the trial court consolidated the charges into two judgments, in cases 15 CRS 055688 and 16 CRS 051293, sentencing Defendant to two consecutive sentences totaling twenty-two to forty-six months in prison. The trial court suspended both of Defendant's sentences and placed him on probation for thirty months.

On 30 May 2017, Probation Officer Leslie Hoover (Officer Hoover) filed a Violation Report (2017 Violation Report) in case number 15 CRS 055688, alleging Defendant had willfully violated the following conditions of his probation:

1. "Report as directed by the Court, Commission or the supervising officer to the officer at reasonable times and places . . ." in that DEFENDANT FAILED TO REPORT FOR AN OFFICE APPOINTMENT ON 4/21/17, REPORTED 40MINS. LATE ON 4/27/17 & 1HR. LATE ON 5/23/17.
2. Condition of Probation "The defendant shall pay to the Clerk of Superior Court the "Total Amount Due" as directed by the Court or probation officer" in that DEFENDANT IN ARREARS \$350.00 IN COURT INDEBTEDNESS.
3. Condition of Probation "The defendant shall pay to the Clerk of Superior Court the monthly supervision fee as set by law" in that DEFENDANT IS IN ARREARS \$280.00 IN PROBATION SUPERVISION FEES.

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4. Condition of Probation “Submit upon the request of any law enforcement or supervising officer, to any physical, chemical, blood, or breath test or to a urinalysis for the detection of alcohol or controlled substances” in that DEFENDANT REFUSED TO SUBMIT TO A DRUG SCREEN ON 5/23/17 AT THE PROBATION OFFICE, DESPITE BEING GIVEN MULTIPLE OPPORTUNITIES TO RETRACT THE REFUSAL.

The parties agree there is no indication in the Record that any hearing occurred on the 2017 Violation Report prior to the filing of the subsequent violation reports discussed below.

In approximately November 2018, Defendant was transferred to Probation Officer Marcus Globuschutz (Officer Globuschutz). On 20 December 2018, Officer Globuschutz filed two Violation Reports alleging multiple violations—one in file number 15 CRS 055688 (15 CRS 055688 Violation Report) and one in file number 16 CRS 051293 (16 CRS 051293 Violation Report) (collectively, the 2018 Violation Reports). The 15 CRS 055688 Violation Report alleged Defendant had willfully violated conditions of probation as follows:

1. Condition of Probation “The defendant shall pay to the Clerk of Superior Court the “Total Amount Due” as directed by the Court or probation officer” in that THE DEFENDANT HAS NOT MADE ANY PAYMENTS ON THIS CASE AND HE IS IN THE ARREARS \$1902.50 [sic].
2. General Statute 15A-1343(b)(1) “Commit no criminal offense in any jurisdiction” in that DEFENDANT WAS CONVICTED OF SHOP LIFTING IN GUILFORD CO 16 CR 032899—OFFENSE DATE 12-20-2016.

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3. General Statute 15A-1343(b)(1) “Commit no criminal offense in any jurisdiction” in that THE DEFENDANT HAS BEEN CONVICTED OF THE FOLLOWING CRIMES, ALL OCCURRED AFTER THE CONVICTING DATE OF THIS PROBATION CASE. FEL LARCENY—MOORE CO 17 CRS 052131 OFFENSE DATE: 7-26-17; ASSAULT WITH INJURY ON DETENTION STAFF—MOORE CO 18CRS051313 OFFENSE DATE 05-04-18; ROBBERY WITH DANGEROUS WEAPON—MOORE CO 17CRS052131 7-26-17; 2ND DEGREE KIDNAPPING MOORE CO 17CRS052131 7-26-17; MALICIOUS CONDUCT BY PRISONER MOORE CO 18CRS051312 04-25-18; FEL ASSAULT ON GOVE OFFICIAL MOORE CO 18CRS051313 05-04-18.

Likewise, the 16 CRS 051293 Violation Report alleged Defendant had willfully violated conditions of probation as follows:

1. Condition of Probation “The defendant shall pay to the Clerk of Superior Court the “Total Amount Due” as directed by the Court or probation officer” in that THE DEFENDANT HAS ONLY PAID \$38.00 TOWARD HIS CASE AND IS IN THE ARREARS \$939.50.
2. General Statute 15A-1343(b)(1) “Commit no criminal offense in any jurisdiction” in that DEFENDANT WAS FOUND TO BE GUILTY IN GUILFORD CO FOR SHOP LIFTING 216 CR 032899 OFFENSE DATE 12-20-2016.
3. General Statute 15A-1343(b)(1) “Commit no criminal offense in any jurisdiction” in that THE DEFENDANT HAS BEEN CONVICTED OF THE FOLLOWING CRIMES, ALL OCCURRED AFTER THE CONVICTING DATE OF THIS PROBATION CASE. FEL LARCENY—MOORE CO 17 CRS 052131 OFFENSE DATE: 7-26-17; ASSAULT WITH INJURY ON DETENTION STAFF—MOORE CO 18CRS051313 OFFENSE DATE 05-04-18; ROBBERY WITH DANGEROUS WEAPON—MOORE CO 17CRS05213 17-26-17; 2ND DEGREE KIDNAPPING MOORE CO 17CRS052131 7-26-17; MALICIOUS CONDUCT BY PRISONER MOORE CO

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18CRS051312 04-25-18; FEL ASSAULT ON GOVE
OFFICIAL MOORE CO 18CRS051313 05-04-18.

On 11 February 2019, the trial court held a hearing on the 2018 Violation Reports filed by Officer Globuschutz. After hearing testimony from Officer Globuschutz, the trial court orally rendered the following: “Court finds the violation in 16CRS51293, paragraphs 1, 2, 3, finds the violations in that file number. Court finds the violations in full in 15CRS55688, consists of paragraphs 1 through -- find paragraph number 1.” The trial court then revoked Defendant’s probation in both 16 CRS 051293 and 15 CRS 055688, which were to run consecutively to a current active sentence from other convictions in Moore County. The same day, the trial court entered both the 15 CRS 055688 Judgment and 16 CRS 051293 Judgment revoking Defendant’s probation. Notably, however, for purposes of this appeal in the 15 CRS 055688 Judgment, the trial court specifically found as fact Defendant had violated paragraph 1 of the *2017 Violation Report* previously filed by Officer Hoover. Defendant gave Notice of Appeal from both Judgments in open court.

Issues

The dispositive issues are (I) whether the trial court abused its discretion by revoking Defendant’s probation in 15 CRS 055688 based on the finding Defendant violated paragraph 1 of the 2017 Violation Report and (II) whether the trial court erred by failing to credit Defendant for previously awarded jail credit.

Analysis

I. Probation Revocation

A. Standard of Review

A proceeding to revoke probation is often regarded as informal or summary, and the court is not bound by strict rules of evidence. An alleged violation by a defendant of a condition upon which his sentence is suspended need not be proven beyond a reasonable doubt. All that is required is that the evidence be such as to reasonably satisfy the judge in the exercise of his sound discretion that the defendant has violated a valid condition upon which the sentence was suspended. The findings of the judge, if supported by competent evidence, and his judgment based thereon are not reviewable on appeal, unless there is a manifest abuse of discretion.

State v. Tennant, 141 N.C. App. 524, 526, 540 S.E.2d 807, 808 (2000) (alteration, citations, and quotation marks omitted).

B. Analysis

Defendant contends the trial court abused its discretion by revoking Defendant's probation in 15 CRS 055688 because the trial court's ruling and Judgment reflect the trial court revoked Defendant's probation based on a nonrevocable violation of his probation. We agree.

Under Section 15A-1344(a) of our General Statutes, a trial court may not "revoke a defendant's probation for a probation violation, unless that violation is committing a new crime or absconding, or unless the violation follows two prior periods of confinement in response to violations[.]" *State v. Williams*, 243 N.C. App. 198, 200, 776 S.E.2d 741, 743 (2015) (citation omitted). Unless waived by the

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probationer, a trial court must “hold a hearing to determine whether to revoke . . . probation and must make findings to support the decision and a summary record of the proceedings.” N.C. Gen. Stat. § 15A-1345(e) (2019).

Here, the trial court orally found it was revoking Defendant’s probation in 15 CRS 055688 based on a violation of “paragraph number 1.” At the hearing, Officer Globuschutz presented the 15 CRS 055688 Violation Report, which in paragraph one stated as a violation of probation Defendant was in arrears of \$1902.50. In its Judgment revoking Defendant’s probation in 15 CRS 055688, the trial court, however, instead indicated its ground for revocation was the fact Defendant had violated paragraph 1 of the 2017 Violation Report filed by Officer Hoover.¹ Paragraph 1 of the 2017 Violation Report states Defendant violated his probation because he failed to report or had shown up late to an appointment with his probation officer on three separate occasions. This allegation, however, does not constitute a revocable probation violation. *See Williams*, 243 N.C. App. at 200, 776 S.E.2d at 743 (holding a defendant’s probation may only be revoked if the defendant absconds, commits a new crime, or commits a probation violation following two prior periods of confinement in response to violations (citation omitted)).

The State, however, contends the trial court’s 15 CRS 055688 Judgment referencing paragraph 1 of Officer Hoover’s 2017 Violation Report merely reflects a

¹ As the State concedes, the 2017 Violation Report was not admitted or discussed during the 11 February 2019 hearing.

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clerical error, arguing the trial court intended instead to reference Officer Globuschutz's 15 CRS 055688 Violation Report. The State requests this Court simply remand the matter for correction of the error.²

Here, however, even if we assume the trial court intended to reference paragraph 1 of Officer Globuschutz's 15 CRS 055688 Violation Report rather than paragraph 1 of Officer Hoover's 2017 Violation Report, the fact remains this does not constitute grounds for revoking probation. Specifically, in paragraph 1 of the 15 CRS 055688 Violation Report, Officer Globuschutz alleged Defendant violated a term of his probation by failing to pay the amount of restitution ordered. *See* N.C. Gen. Stat. § 15A-1344(a) (2019); *see also Williams*, 243 N.C. App. at 200, 776 S.E.2d at 743 (probation may only be revoked where the "violation is committing a new crime or absconding, or unless the violation follows two prior periods of confinement in response to violations" (citation omitted)).

Therefore, because neither paragraph 1 of the 2017 Violation Report nor paragraph 1 of the 15 CRS 055688 Violation Report constitutes a ground for revoking Defendant's probation, the trial court's reliance on either "paragraph number 1" as

² The State appears to imply the trial court should have essentially mirrored the 16 CRS 051293 Judgment and found violations of all of the allegations in paragraphs 1-3 of the 15 CRS 055688 Violation Report filed by Officer Globuschutz. However, the trial court both in rendering its ruling and in entering the 15 CRS 055688 Judgment *only* referenced "paragraph number 1" as the basis of its revocation. Thus, the Judgment entered was, in that regard, consistent with the ruling announced. *See State v. Lawing*, 12 N.C. App. 21, 23, 182 S.E.2d 10, 11-12 (1971) (holding a clerical error exists when a judgment does not reflect what was announced in open court (citation omitted)).

the sole basis for revoking Defendant's probation was error. Thus, the trial court abused its discretion by revoking Defendant's probation in 15 CRS 055688. Consequently, we reverse the trial court's 15 CRS 055688 Judgment.

II. Previously Awarded Jail Credit

Defendant next contends, and the State concedes, the trial court erred by entering the 15 CRS 055688 and 16 CRS 051293 Judgments without crediting him for time previously spent in custody.

Under N.C. Gen. Stat. § 15-196.1 . . . , a defendant is entitled to credit for "the total amount of time a defendant has spent, committed to or in confinement in any State or local correctional institution as a result of the charge that culminated in the sentence." Defendant thus has a statutory right to credit against his sentence for any time spent in custody on that particular charge, whether pre-trial or post-conviction. The statute further provides: "upon sentencing or activating a sentence, the judge presiding shall determine the credits to which the defendant is entitled and shall cause the clerk to transmit to the custodian of the defendant a statement of allowable credits." N.C. Gen. Stat. § 15-196.4[.]

State v. Reynolds, 164 N.C. App. 406, 408, 595 S.E.2d 788, 789 (2004) (alterations and citation omitted).

Here, the Judgments entered by the trial court fail to reflect any calculation of the jail credit to which Defendant may be entitled. *See id.* (citations omitted). Therefore, the trial court erred by entering the 15 CRS 055688 and 16 CRS 051293 Judgments giving Defendant zero days of jail credit. Because we have already reversed the 15 CRS 055688 Judgment, we therefore vacate and remand the 16 CRS

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051293 Judgment to the trial court to calculate any credit to which Defendant is entitled for his prior confinement related to that Judgment and for entry of a new judgment crediting Defendant for his prior confinement. *See State v. Belcher*, 173 N.C. App. 620, 625, 619 S.E.2d 567, 571 (2005).

Conclusion

Accordingly, for the foregoing reasons, we reverse the 15 CRS 055688 Judgment. We also vacate and remand the 16 CRS 051293 Judgment to the trial court for entry of a new judgment crediting Defendant for his time previously spent in confinement.

JUDGMENT IN 15 CRS 055688 REVERSED.

JUDGMENT IN 16 CRS 051293 VACATED AND REMANDED.

Judges ARROWOOD and COLLINS concur.

Report per Rule 30(e).