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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-1117

Filed: 6 October 2020

Cumberland County, Nos. 14 CRS 56289, 16 CRS 51775

STATE OF NORTH CAROLINA

v.

MONTOYA LAQUAN MEEKS

Appeal by defendant from judgments entered 5 August 2019 by Judge John M. Dunlow in Cumberland County Superior Court. Heard in Court of Appeals 12 August 2020.

Attorney General Joshua H. Stein, by Assistant Attorney General Elly S. Young, for the State.

Benjamin J. Kull for defendant.

DIETZ, Judge.

Defendant Montoya Meeks challenges two judgments revoking his probation. As explained below, the trial court did not abuse its discretion by determining that Meeks absconded and we therefore affirm the portions of the judgments concerning absconding.

Meeks also contends there are clerical errors in the portions of both judgments

addressing separate allegations of possession of a firearm and committing a new criminal offense. As explained below, we cannot be certain that the alleged errors are clerical ones. We therefore vacate and remand the judgments for further proceedings with respect to those violation reports.

Finally, in our discretion, we deny Meeks's petition for a writ of certiorari to challenge the civil judgment entered against him for the unpaid portion of the restitution and community service fees in his criminal sentence.

Facts and Procedural History

In 2015, Montoya Meeks pleaded guilty to one count of conspiracy to commit armed robbery. The court imposed a suspended sentence of 25 to 42 months in prison and placed Meeks on 60 months of supervised probation. The trial court also ordered Meeks to pay \$12,668.99 in restitution and a \$250 community service fee. In early 2017, Meeks pleaded guilty to one count of possession of a firearm by a felon and the court sentenced him to 12 to 24 months in prison, suspended for 30 months of supervised probation.

In October 2018, Officer LaMirand, Meeks's probation officer, filed violation reports alleging that Meeks violated several conditions of supervised probation, including possession of a firearm, leaving North Carolina without permission, and committing a criminal offense. In November 2018, LaMirand filed additional violation reports alleging that Meeks had absconded from supervision.

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At the hearing on the violation reports, Officer LaMirand testified that he received a call from a police detective in Georgia in early September 2018. The detective explained that Meeks had been arrested in Georgia during a traffic stop and that officers seized a firearm during the stop. Officer LaMirand contacted Meeks on 16 October 2018 and scheduled a probation meeting for the following day. Meeks reported to Officer LaMirand as instructed but then missed a scheduled court date a few weeks later.

On 4 November 2018, Officer LaMirand and two other officers conducted an unannounced visit to Meeks's residence. Meeks's grandmother told the officers that she had not seen Meeks for several weeks and that she believed he had moved to Georgia. The officers searched the home and confirmed that Meeks was not present.

Officer LaMirand returned to Meeks's residence several days later, on 7 November 2018, and Meeks again was not there. Officer LaMirand left a door tag instructing Meeks to report to him by 9:00 a.m. the next morning "or he would be absconded." Meeks did not report to Officer LaMirand.

Officer LaMirand then began exhausting other means of locating Meeks. He checked local hospitals and jails to see if Meeks was there; called Meeks's family members; and called the numbers Meeks listed as his emergency contacts. He also sent Meeks a number of text messages. Meeks never responded to Officer LaMirand.

Meeks admitted at the hearing that he left the jurisdiction without permission

but denied that he possessed a firearm, committed a criminal offense, or absconded.

After hearing the parties' evidence, the trial court announced that "[t]he State is not proceeding on paragraph 1 or 3," which were the paragraphs in the October 2018 violation reports that contained allegations of possessing a firearm and committing a criminal offense. The court announced that it would find Meeks in willful violation of the remaining condition in the October 2018 violation reports, which alleged that Meeks left the jurisdiction without permission. The court also announced that it would find Meeks in willful violation of the condition alleged in the November 2018 reports concerning absconding.

The Court entered two written judgments revoking Meeks's probation and activating his 2015 and 2017 sentences for conspiracy to commit armed robbery and possession of a firearm by a felon. With respect to the first set of violation reports, the written judgment for the 2017 possession of a firearm by a felon conviction indicated that Meeks violated all three conditions—possessing a firearm, leaving the jurisdiction without permission, and committing a criminal offense—despite the court's statement at the hearing that the State "was not proceeding" on the first and third violations. Likewise, the written judgment for the 2015 conspiracy to commit robbery conviction indicated that Meeks violated conditions "1" and "3" (possessing a firearm and committing a criminal offense), despite the court's oral statement that Meeks violated the condition "detailed in paragraph No. 2" (leaving the jurisdiction)

and that the State was “not proceeding” on the allegations in paragraphs one and three.

Both judgments also found that Meeks absconded from supervision as alleged in the November 2018 reports and revoked his probation based on absconding. Meeks timely appealed.

Analysis

I. Revocation for absconding

Meeks first challenges the court’s determination that he absconded. This Court reviews a trial court’s determination that a defendant violated a condition of probation, including absconding, for abuse of discretion. *State v. Murchison*, 367 N.C. 461, 464, 758 S.E.2d 356, 358 (2014). The trial court may revoke a defendant’s supervised probation if the defendant absconds “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), 15A-1344(a); *State v. Williams*, 243 N.C. App. 198, 199–200, 243 S.E.2d 741, 742–43 (2015).

The trial court was well within its sound discretion to find a violation for absconding in this case. The State’s evidence established that Meeks knew he faced allegations of probation violations for an arrest that took place in Georgia. He was in contact with his probation officer during this time. Then, as the time to appear and address those allegations approached, Meeks disappeared. He did not return his

probation officer's phone calls and text messages. He was never home when officers visited his residence. He did not respond to messages left there. His grandmother told officers that she believed Meeks moved to Georgia. Officers exhausted other possible means of locating Meeks, such as checking with nearby jails and hospitals, family members, and Meeks's emergency contacts. Still, Meeks could not be found.

These facts readily are sufficient to permit the trial court, in the exercise of its sound discretion, to find that Meeks willfully avoided supervision and willfully made his whereabouts unknown to his probation officer. *State v. Trent*, 254 N.C. App. 809, 821, 803 S.E.2d 224, 232 (2017). This is not a case in which the absconding allegation is effectively the same as an allegation of failure to report or provide a current address of residence. Instead, the State's evidence established that Meeks, having been informed that he was facing potential probation revocation based on allegations that he committed a new criminal offense, avoided his probation officer's attempts to communicate with him, left the residence where he previously could be located, and willfully took other steps to avoid any contact with his probation officer that might reveal his current whereabouts. This meets the legal definition of absconding. Accordingly, we affirm the portions of the trial court's judgments revoking Meeks's probation for absconding.

II. Alleged clerical errors

Meeks next argues that there are clerical errors in the trial court's judgments.

The trial court announced at the hearing that it found that Meeks violated the condition “detailed in paragraph No. 2 of the violation report” (leaving the jurisdiction) and that the State was “not proceeding” on the allegations concerning possessing a firearm and committing a criminal offense, which are found in paragraphs one and three of the October 2018 violation reports. But in the written judgments, which use a pre-printed form, the court wrote “1,2,3” on the line indicating which paragraphs in the report the court found were violated on the judgment for possession of firearm by a felon and “1,3” on the judgment for conspiracy to commit robbery. Meeks argues that the “1” and “3” on those lines of the pre-printed forms are clerical errors that should be summarily corrected.

The State, by contrast, contends that these are not clerical errors but intentional findings by the trial court. The State points out that, unlike at criminal sentencing, a trial court can announce a ruling concerning a probation violation at the hearing and then, in effect, change its mind and enter a different ruling in the written judgment. *State v. Hancock*, 248 N.C. App. 744, 748, 789 S.E.2d 522, 525 (2016). That is what happened here, according to the State.

This case does not fit neatly into either parties’ view of what the trial court intended in its written judgment. On the one hand, this could have been an intended ruling by the trial court, so we cannot say with certainty that it is a clerical error. On the other hand, this case is quite different from *Hancock* because, here, the court

affirmatively stated at the hearing that the State was not pursuing those allegations, leaving Meeks with the understanding that he need not defend against them. We are not confident that the trial court, without notice to the parties, would choose to enter judgments based on allegations that the State abandoned at the hearing.

In light of this uncertainty, we believe that justice is best served by vacating the trial court's judgments with respect to the allegations of possession of a firearm and committing a criminal offense and remanding the matter to the trial court to ensure that the challenged portions of the judgments were not entered in error. On remand, the trial court may enter new judgments on the existing record or conduct any further proceedings that the court, in its discretion, finds necessary. *See State v. Wallace*, __ N.C. App. __, 843 S.E.2d 733, 2020 WL 3721445, at *4 (2020) (unpublished) (remanding criminal judgment because "we cannot be sure from the record on appeal that this was a clerical error in the recording of the judgment").

III. Challenge to criminal sentence

Meeks next challenges the entry of a civil judgment against him for the remaining, unpaid portion of the restitution award and community service fee imposed as part of his 2015 sentence for conspiracy to commit armed robbery. Meeks acknowledges that he did not file a written notice of appeal from this civil judgment and petitions for a writ of certiorari so that this Court can address the argument on the merits.

In our discretion, we deny the petition and decline to issue the writ because Meeks has not shown merit with respect to this argument. *See State v. Grundler*, 251 N.C. 177, 189, 111 S.E.2d 1, 9 (1959). Meeks contends that he was not afforded notice and an opportunity to be heard before the trial court entered the civil judgment for the outstanding restitution and fees. Meeks relies on this Court's decision in *State v. Friend*, 257 N.C. App. 516, 809 S.E.2d 902 (2018), to support this due process argument.

This argument fails because *Friend* is readily distinguishable from this case. *Friend* concerned the entry of a civil judgment for the attorneys' fees of the defendant's court-appointed counsel. The issue was not lack of notice that a civil judgment for attorneys' fees might be awarded at criminal sentencing, but the possibility that defendants at sentencing are not given a sufficient opportunity to be heard on that question. This concern over opportunity to be heard arises because defendants' court-appointed counsel have a conflict of interest with respect to an award of their own attorneys' fees, yet the defendants themselves might be unaware that, on this issue and this issue only, they are permitted to speak for themselves, rather than being required to have their counsel speak for them. *Id.* at 522–23, 809 S.E.2d at 906–07. To remedy this dilemma, we held in *Friend* that due process requires the trial court to ensure that defendants in this situation are aware of their right to speak for themselves. *Id.*

Here, by contrast, Meeks's counsel did not have a conflict of interest with respect to the award of restitution and community service fees. Moreover, the law provides that, when the payment of a restitution award is a condition of probation, as is the case here, upon revocation of probation the trial court will determine the remaining sum payable and enter a civil judgment for that amount. *See* N.C. Gen. Stat. § 15A-1340.38. Similarly, upon revocation of probation, the trial court may enter a judgment for unpaid costs or fees whose payment previously was a condition of probation. *See State v. Batchelor*, __ N.C. App. __, 833 S.E.2d 255, 2019 WL 4803703, at *2 (2019) (unpublished).

Thus, by receiving notice of the allegations in the probation violation reports and being afforded a hearing to contest those allegations, Meeks had notice that this civil judgment was a possible consequence of probation revocation and had the opportunity to be heard on these issues during the probation revocation hearing. Accordingly, the trial court's entry of this civil judgment did not violate Meeks's constitutional right to due process of law. In our discretion, we deny the petition for a writ of certiorari and allow the State's motion to dismiss Meeks's appeal from the civil judgment.

Conclusion

We affirm the portions of the trial court's judgments based on the November 2018 violation reports concerning absconding. We vacate the portions of those

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judgments based on the October 2018 violation reports and remand for further proceedings as described in this opinion. We dismiss the portion of the appeal challenging the civil judgment for unpaid restitution and community service fees.

AFFIRMED IN PART; VACATED AND REMANDED IN PART; DISMISSED
IN PART.

Judges BERGER and ARROWOOD concur.

Report per Rule 30(e).