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IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-83

No. COA20-419

Filed 16 March 2021

Wayne County, No. 19 CRS 50117

STATE OF NORTH CAROLINA

v.

RILEY KENNINGTON

Appeal by defendant from judgment entered 3 March 2020 by Judge William W. Bland in Wayne County Superior Court. Heard in the Court of Appeals 9 February 2021.

Attorney General Joshua H. Stein, by Assistant Attorney General Hugh A. Harris, for the State.

Richard Croutharmel for defendant.

ARROWOOD, Judge.

¶ 1

Riley Kennington (“defendant”) appeals from judgment entered 3 March 2020 following his guilty plea to indecent liberties with a child. Defendant contends that the trial court erred in ordering defendant to live with his grandmother while on probation without first ascertaining that it was lawful for a registered sex offender to

live in the grandmother's residence. For the following reasons, we affirm the trial court's order.

I. Background

¶ 2 On 9 January 2019, the Wayne County Sheriff's Department charged defendant, a resident of South Carolina, with indecent liberties with a child and solicitation of a child by computer. On 10 January 2019, defendant signed a waiver of extradition. Defendant was served with a warrant for arrest on 14 January 2019.

¶ 3 On 9 August 2019, defendant entered a guilty plea to indecent liberties with a child pursuant to a plea deal. The State's factual basis for defendant's guilty plea showed as follows.

¶ 4 On 28 November 2018, a Wayne County resident reported to Wayne County Sheriff's Department that defendant had been communicating with her seven-year-old daughter through various applications on her daughter's cell phone. The woman looked at her daughter's cell phone and saw that defendant had sent naked photographs of himself. Police officers interviewed the woman's daughter and learned that she had sent naked photographs of herself at defendant's prompting. Defendant was 17 years old at the time of the incident.

¶ 5 Wayne County Sheriff's Office detectives went to South Carolina to meet with defendant and his grandmother, who he had lived with for most of his life. When detectives asked defendant how old he thought the woman's daughter was, he

guessed she was 12 years old and admitted “that he told her he was coming to see her in North Carolina, but that was only to make her feel good[.]” Defendant made a written statement to the woman and her daughter to apologize for his actions and the detectives instructed defendant not to contact the woman’s daughter anymore.

¶ 6 Pursuant to the plea agreement, defendant pled guilty to indecent liberties with a minor in exchange for the dismissal of the solicitation of a minor by computer charge. The trial court sentenced defendant to a sentence of 13 to 25 months imprisonment with credit for 15 days, and suspended the sentence for 60 months supervised probation with regular and special conditions. The conditions of probation included requirements for defendant to pass the General Education Development (“GED”) test within 36 months, obtain a sex offender specific evaluation and comply with its recommendations, and to live with his grandmother in South Carolina until he graduated from high school or obtained a diploma. As part of the residency requirement, the trial court ordered that any moves had to be approved by a probation officer and that defendant was not to move until fulfilling his educational requirement. The trial court also ordered defendant to register as a sex offender for 30 years.

¶ 7 Defendant’s trial counsel requested the trial court allow defendant to reside in South Carolina while defendant gathered funds to transfer his probation to South Carolina. The trial court granted defendant’s request and stayed entry of judgment

to allow defendant time to transfer his probation to South Carolina. On 4 March 2020, defendant returned to court prepared to transfer his probation to South Carolina. The trial court lifted the stay and entered judgment. On 10 March 2020, defendant entered written notice of appeal.

II. Analysis

¶ 8 Defendant argues on appeal that the trial court erred in ordering defendant to live with his grandmother while on probation without first ascertaining that it was lawful for a registered sex offender to live in the grandmother's residence. We disagree.

¶ 9 A trial court's decision to impose a condition of probation is reviewed for abuse of discretion. *State v. Allah*, 231 N.C. App. 88, 98, 750 S.E.2d 903, 911 (2013), *disc. review denied*, 367 N.C. 808, 766 S.E.2d 676 (2014). "An abuse of discretion occurs only when a court's decision 'is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision.'" *State v. Williams*, 230 N.C. App. 590, 597, 754 S.E.2d 826, 830 (2013) (quoting *State v. Campbell*, 359 N.C. 644, 673, 617 S.E.2d 1, 19 (2005)).

¶ 10 "When the court places a convicted offender on probation, it must determine conditions of probation as provided in G.S. 15A-1343." N.C. Gen. Stat. § 15A-1342(a) (2019). The court is authorized to set residency restrictions as part of special conditions of probation for sex offenders, pursuant to N.C. Gen. Stat. § 15A-1343(b1)-

(b2). This may include ordering a defendant to “attend or reside in a facility providing rehabilitation, counseling, treatment, social skills, or employment training, instruction, recreation, or residence for persons on probation[;]” to “[n]ot reside in a household with any minor child if the offense is one in which there is evidence of sexual abuse of a minor[;]” or that the defendant must “[s]atisfy any other conditions determined by the court to be reasonably related to his rehabilitation.” N.C. Gen. Stat. § 15A-1343(b1)(2), (b1)(10), (b2)(4) (2019). Additionally, a registered sex offender “shall not knowingly reside within 1,000 feet of the property on which any public or nonpublic school or child care center is located.” N.C. Gen. Stat. § 14-208.16(a) (2019). South Carolina employs a similar statute: “[i]t is unlawful for a sex offender who has been convicted of any of the following offenses to reside within one thousand feet of a school, daycare center, children’s recreational facility, park, or public playground.” S.C. Code § 23-3-535(B).

¶ 11 Defendant contends that the trial court made no findings that his grandmother’s residence was a lawful place for a registered sex offender to live. Defendant also argues that ordering defendant to live with his grandmother presented defendant “with the potential problem of being in violation of South Carolina law if he complied with the trial court’s order[.]” because the residence is within one mile of a day care and health club. Defendant has failed to show, however, that his grandmother’s residence is located within 1,000 feet of any childcare facility.

Based on the internet search defendant cites in his brief, the day care center is located approximately 3,900 feet from the residence.¹

¶ 12 More importantly, defendant has failed to show that the trial court abused its discretion in ordering defendant to live at his grandmother's residence. Defendant had several opportunities to address the issue of residence before the trial court but failed to do so. This includes a gap of approximately eight months while the judgment was stayed to allow defendant the opportunity to obtain funds to transfer his probation. Based on the information available to the trial court at the 9 August 2019 sentencing hearing and the 4 March 2020 judgment hearing, we conclude that the trial court did not abuse its discretion in ordering defendant to live with his grandmother as part of defendant's probation conditions.

III. Conclusion

¶ 13 For the foregoing reasons, we affirm the trial court's judgment and probation order. This decision is without prejudice to defendant's right to file a motion to modify his terms of requirements should he be able to show inability to comply without violations of the South Carolina statutes.

¹ A straight-line measurement taken from Google Maps between the grandmother's residence and the day care and child developmental center indicates a distance of 3,953.56 feet.

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Opinion of the Court

AFFIRMED.

Judges DILLON and MURPHY concur.

Report per Rule 30(e).