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IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-130

No. COA20-184

Filed 6 April 2021

Wilson County, No. 19 CRS 1286

STATE OF NORTH CAROLINA

v.

DARRYL JESSON WILLIAMS, JR.

Appeal by defendant from judgment entered 3 September 2019 by Judge Walter H. Godwin, Jr., in Wilson County Superior Court. Heard in the Court of Appeals 26 January 2021.

Attorney General Joshua H. Stein, by Assistant Attorney General Heather Haney, for the State.

Gilda C. Rodriguez for defendant-appellant.

ZACHARY, Judge.

¶ 1

Defendant Darryl Jesson Williams, Jr., appeals from the judgment entered upon the trial court's revocation of his probation. On appeal, Defendant argues that the trial court erred in concluding that he absconded from probation, in violation of N.C. Gen. Stat. § 15A-1343(b)(3a) (2019). In that the State presented insufficient evidence to support a conclusion that Defendant willfully absconded, we reverse and remand.

Background

¶ 2

On 3 May 2018, Defendant appeared in Onslow County Superior Court before the Honorable Charles H. Henry and entered an *Alford* plea¹ to the charge of felony larceny. The trial court entered a Judgment Suspending Sentence and sentenced Defendant to an active term of 15 to 27 months, suspended upon a period of 48 months of supervised probation, based on a finding that a longer period of probation was necessary than that which is specified in N.C. Gen. Stat. § 15A-1343.2(d). As special conditions of probation, Defendant was ordered, *inter alia*, to successfully pass the General Education Development (“GED”) Test during the first 12 months of the period of probation, and to serve an active term of five months, less 150 days, in the custody of the Sheriff. The trial court also ordered Defendant to pay restitution.

¶ 3

At some later point, upon Defendant’s request, Defendant’s probation was transferred to Wilson County. Officer Kenneth Paff was assigned to supervise Defendant on probation. On 14 May 2019, Officer Paff filed a violation report alleging that Defendant (1) tested positive for THC on seven dates, and (2) had not obtained his GED certificate within the required 12 months after entry of judgment. On 18

¹ Under *North Carolina v. Alford*, 400 U.S. 25, 27 L. Ed. 2d 162 (1970), criminal defendants may enter a plea admitting that the State has sufficient evidence to convict them and agreeing to be treated as guilty, while maintaining their innocence.

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July 2019, Officer Paff filed another violation report, alleging that Defendant had committed the following additional violations of his probation:

1. Regular Condition of Probation: General Statute 15A-1343(b)(3a) “Not to abscond, by willfully avoiding supervision or by willfully making the supervisee’s whereabouts unknown to the supervising probation officer” in that, ON OR ABOUT 07/16/19, AND AFTER NUMEROUS ATTEMPTS TO CONTACT THE DEFENDANT, INCLUDING AT THE LAST KNOWN ADDRESS . . . , THE SAID DEFENDANT HAS REFUSED TO MAKE HIMSELF AVAILABLE FOR SUPERVISION AS INSTRUCTED BY THE PROBATION OFFICER, THEREBY ABSCONDING SUPERVISION. FURTHERMORE, ON 7/15/19 OFFICER WAS TOLD BY MOTHER THAT OFFENDER WILL LIVE WITH HER BUT DOES NOT WANT ME COMING TO HER RESIDENCE. WHEN OFFICER ATTEMPTED TO EXPLAIN RULES REGARDING HOUSING TO OFFENDERS [sic] MOTHER, OFFENDERS [sic] MOTHER PROCEEDED TO YELL AND CURSE AT OFFICER.

2. “Report as directed by the Court, Commission or the supervising officer to the officer at reasonable times and places. . .” in that DEFENDANT WAS INSTRUCTED TO REPORT TO THE PROBATION OFFICE ON 7/2/19 AT 1PM, 7/10/19 AT 4PM VIA DOOR HANGERS LEFT AT RESIDENCE TO SIGN ADDENDUM VIOLATION, DEFENDANT FAILED TO REPORT. FURTHERMORE, DEFENDANT FAILED TO REPORT TO SCHEDULED OFFICE APPOINTMENTS ON 7/15/19 AT 1PM AND OFFICE APPOINTMENT SCHEDULED FOR 7/16/19 AT 8:30AM VIA DOOR HANGER AFTER DEFENDANT MISSED SCHEDULED APPOINTMENT THE DAY BEFORE.

3. Other violation

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ON 6/14/19 THE DEFENDANT WAS REFERRED TO CBI.
PER TALKING TO PROGRAM COORDINATOR THE
DEFENDANT IS BEING DISCHARGED DUE TO NOT
BEING ABLE TO BE REACHED.

¶ 4 On 3 September 2019, Defendant appeared for his probation revocation hearing before the Honorable Walter H. Godwin, Jr., in Wilson County Superior Court. Officer Paff and Defendant testified.

¶ 5 Officer Paff testified that Defendant last attended a scheduled appointment on 25 June 2019. He testified that he left “door hanger” notices at the home of Defendant’s mother, where Defendant also resided, at 8:58 p.m. on 1 July 2019 and at 11:59 a.m. on 9 July 2019, directing him to report to the probation office on 2 July 2019 at 1:00 p.m. and 10 July 2019 at 4:00 p.m., respectively. Officer Paff had no other address on record for Defendant. Defendant did not appear as directed, nor did he attend a regularly scheduled office appointment on 15 July 2019.

¶ 6 On the evening of 15 July 2019, Officer Paff went to the home of Defendant’s mother and left a door hanger directing Defendant to report to Officer Paff’s office at 8:30 a.m. the following day. As Officer Paff was walking away, Defendant’s mother came to the door and told Officer Paff that she had been away for the past three weeks. She further informed Officer Paff that although Defendant would “continue to live with her[,] . . . she [did] not want [Officer Paff] coming to her residence anymore.” When Officer Paff “attempted to explain the rules regarding housing to [Defendant]’s

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mother, [she] proceeded to yell and curse at” Officer Paff. She also stated that she did not know where Defendant was.

¶ 7 Defendant did not report to Officer Paff’s office at 8:30 a.m. on 16 July 2019, as directed by the door hanger. Officer Paff then called “all [the] numbers that were listed for” Defendant. Officer Paff reached Defendant’s grandmother by telephone, but “she stated she had no idea where he was currently.”

¶ 8 On 18 July 2019, Officer Paff filed the second violation report alleging, *inter alia*, that Defendant had absconded from supervision.

¶ 9 Defendant also testified at the probation revocation hearing, denying that he absconded from supervision but admitting the other violations. Defendant testified that he was preoccupied because he had recently gained visitation with his son, and because his brother was seriously ill with heart disease. Defendant further testified that he believed that his mother had communicated to Officer Paff that they would be away in Goldsboro for a few weeks. In addition, Defendant testified that he never received a text message or phone call from Officer Paff during the relevant time period.

¶ 10 The trial court found that Defendant willfully absconded and otherwise violated the terms and conditions of his probation as alleged in the 14 May and 18 July 2019 violation reports. The trial court then revoked Defendant’s probation and activated his suspended sentence. Defendant gave notice of appeal in open court.

Discussion

¶ 11 Defendant alleges that the trial court erred and abused its discretion in revoking Defendant’s probation because the State presented insufficient evidence that he absconded by willfully making his whereabouts unknown to his probation officer under N.C. Gen. Stat. § 15A-1343(b)(3a). We agree.

I. 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. Once the State has presented competent evidence establishing a defendant’s failure to comply with the terms of probation, the burden is on the defendant to demonstrate through competent evidence an inability to comply with the terms.

State v. Trent, 254 N.C. App. 809, 812–13, 803 S.E.2d 224, 227 (2017) (citations and internal quotation marks omitted), *disc. review denied*, 370 N.C. 576, 809 S.E.2d 599 (2018).

¶ 12 “We review a trial court’s decision to revoke a defendant’s probation for abuse of discretion.” *State v. Melton*, 258 N.C. App. 134, 136, 811 S.E.2d 678, 680 (2018). “A trial court abuses its discretion when a ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision.” *Id.* (citation and internal quotation marks omitted).

II. Evidence of Absconding

¶ 13 Section 15A-1343(b) of the North Carolina General Statutes enumerates the regular conditions of probation applicable to defendants placed on probation. Those conditions include, in relevant part, that

a defendant must:

- (1) Commit no criminal offense in any jurisdiction.
- (2) Remain within the jurisdiction of the court unless granted written permission to leave by the court or his probation officer.
- (3) Report as directed by the court or his probation officer to the officer at reasonable times and places and in a reasonable manner, permit the officer to visit him at reasonable times, answer all reasonable inquiries by the officer and obtain prior approval from the officer for, and notify the officer of, any change in address or employment.
- (3a) Not abscond by willfully avoiding supervision or by willfully making the defendant's whereabouts unknown to the supervising probation officer, if the defendant is placed on supervised probation.

N.C. Gen. Stat. § 15A-1343(b)(1)–(3a).

¶ 14 The Justice Reinvestment Act of 2011 (“JRA”) limits the trial court’s authority to revoke a defendant’s probation. *See id.* § 15A-1344(a).

A trial court may only revoke a defendant’s probation in circumstances where the defendant: (1) commits a new criminal offense, in violation of N.C. Gen. Stat. § 15A-1343(b)(1), (2) absconds by willfully avoiding supervision or by willfully making [his or] her whereabouts unknown to the supervising probation officer, in violation of § 15A-

1343(b)(3a), or (3) violates any condition of probation after previously serving two periods of confinement in response to violations, pursuant to § 15A-1344(d2).

Melton, 258 N.C. App. at 136–37, 811 S.E.2d at 680–81. “[U]nder the JRA, our Legislature has expressed a clear intent that activation of probationary sentences should only be used as a last resort and after the use of the other tools available such as two ‘quick dips’ pursuant to N.C. Gen. Stat. § 15A-1344(d2).” *Id.* at 140, 811 S.E.2d at 682.

¶ 15 The JRA also provides a statutory definition of “abscond,” which this Court has determined is met when a defendant “willfully makes his whereabouts unknown to his probation officer, and the probation officer is unable to contact the defendant.” *Id.* at 138, 811 S.E.2d at 681.

A. Notice of Alleged Violation

¶ 16 Defendant contends that, under this Court’s decision in *Melton*, the trial court was only permitted to consider evidence between 16 and 18 July 2019, the dates alleged in the violation report, in determining whether Defendant willfully absconded. In response, the State contends that this Court’s review should include dates prior to the date provided in the violation report that Defendant allegedly absconded because the violation report “listed all dates of missed appointments in the second paragraph of the violation report [regarding missed appointments] with specificity[,]” thus giving Defendant notice of the evidence to be presented by the

State.

¶ 17 In *Melton*, as in the present case, the State alleged that the defendant not only absconded from supervision, but that she also failed to report to meetings, in violation of § 15A-1343(b)(3). *Id.* at 135, 811 S.E.2d at 680. On appeal, this Court did not consider any evidence outside the range of dates alleged in the violation report, nor did we consider evidence of the other alleged probation violations as support for the absconding violation, “because the violation reports only specifically allege[d] that [the] defendant absconded from ‘on or about’ 2 November 2016 to the date the reports were filed, 4 November 2016.” *Id.* at 137, 811 S.E.2d at 681.

¶ 18 Here, Officer Paff alleged in the violation report that Defendant absconded from supervision on or about 16 July 2019. Officer Paff filed the report on 18 July 2019. Accordingly, we will evaluate whether the evidence presented regarding the time period alleged in the probation report—16 through 18 July 2019—supports a finding of absconding.

B. Absconding from Supervision

¶ 19 We next consider whether the State met its burden of providing competent evidence that Defendant absconded by willfully refusing to make himself available for supervision.

¶ 20 In *Melton*, the probation officer alleged that the defendant absconded when she failed to attend a scheduled probation meeting. *Id.* at 135, 811 S.E.2d at 680. We

concluded that the State presented insufficient evidence to prove the defendant absconded from supervision where the evidence showed that the defendant's phone was missing, the probation officer testified that she left messages with the defendant's relatives, visited the defendant's home, and called the defendant's phone, but that the probation officer "did not have written record of these contacts with her at the hearing" and "she was unable to identify with any specificity when she made the contacts[.]" *Id.* Further, there was no evidence that the "defendant knew [that her probation officer] was attempting to contact her." *Id.* at 139, 811 S.E.2d at 682.

¶ 21 In the instant case, the State presented insufficient evidence to support a finding that Defendant absconded from 16 to 18 July 2019. Officer Paff testified that he left a door hanger at Defendant's residence on the evening of 15 July directing Defendant to report to an 8:30 a.m. meeting the following morning, 16 July, which Defendant failed to do. No other evidence was offered to show that Defendant absconded from supervision during the relevant time period. While Officer Paff testified that he called all phone "numbers that were listed" for Defendant, he also testified that only Defendant's grandmother answered, and "she had no idea where [Defendant] was currently." Further, Officer Paff did not offer any specific testimony regarding when he made these calls, whether he left any messages, or whether any of the contacted individuals informed Defendant that Officer Paff was trying to reach him.

¶ 22 As in *Melton*, the State presented no evidence that Defendant “knew [that his probation officer] was attempting to contact [him].” *Compare id., with Trent*, 254 N.C. App. at 821, 803 S.E.2d at 232 (upholding finding of willful absconding where the defendant did not contact his probation officer during period of absconding after learning that the officer was looking for him). We therefore conclude that the evidence was insufficient to support a finding of absconding from supervision in violation of N.C. Gen. Stat. § 15A-1343(b)(3a).

Conclusion

¶ 23 We conclude that the State presented insufficient evidence that Defendant violated N.C. Gen. Stat. § 15A-1343(b)(3a) and accordingly reverse the trial court’s judgment revoking Defendant’s probation. This matter is remanded for entry of an appropriate judgment, consistent with the provisions of N.C. Gen. Stat. § 15A-1344, based on the violations found in the 14 May 2019 report and in sections two and three of the 18 July 2019 report. *See State v. Williams*, 243 N.C. App. 198, 205–06, 776 S.E.2d 741, 746 (2015).

REVERSED AND REMANDED.

Chief Judge STROUD and Judge GORE concur.

Report per Rule 30(e).