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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-153

No. COA21-244

Filed 1 March 2022

Davidson County, No. 19 CRS 52705

STATE OF NORTH CAROLINA

v.

BRANDON DARRYL MURPHY, Defendant.

Appeal by Defendant from judgment entered 28 September 2020 by Judge Joseph N. Crosswhite in Davidson County Superior Court. Heard in the Court of Appeals 5 October 2021.

*Attorney General Joshua H. Stein, by Assistant Attorney General Jessica Helms, for the State.*

*Kimberly P. Hoppin for the Defendant.*

DILLON, Judge.

¶ 1 This case involves whether Defendant's probation was properly revoked, resulting in the activation of his suspended prison sentence.

I. Background

¶ 2 Defendant was convicted of assault with a deadly weapon inflicting serious injury and habitual misdemeanor assault. He was sentenced to a term of

imprisonment of 23-40 months. However, his sentence was suspended, and he was placed on supervised probation for 24 months.

¶ 3 About one year into Defendant's probation, his probation officer filed two reports alleging Defendant violated the terms of his probation. One report alleged that Defendant had committed a new criminal offense, namely, "POSSESSION OF DRUG PARAPHERNALIA." During a hearing on the matter, Defendant admitted he had violated that condition of probation, notwithstanding that he had yet to be convicted for the new crime.

¶ 4 The trial court found that Defendant violated his probation and revoked his probation, activating his suspended sentence. Defendant appealed.

## II. Analysis

¶ 5 Defendant has failed to preserve his appeal. However, he has petitioned our Court to issue a writ of *certiorari*. The State does not oppose this petition. In our discretion, we grant Defendant's petition.

¶ 6 Turning to the merits of the appeal, Defendant argues that the trial court erred by revoking his probation. We disagree.

¶ 7 On appeal, this Court reviews the trial court's decision to revoke probation for an abuse of discretion. *State v. Guffey*, 253 N.C. 43, 45, 116 S.E.2d 148, 150 (1960).

¶ 8 The standard of proof for a trial court ruling to revoke probation is whether "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." *State v. Murchison*, 367 N.C. 461, 464, 758 S.E.2d 356, 358 (2014) (citation omitted). A court may revoke probation where the Defendant commits a *new crime*, except where the sole violation is "for conviction of a Class 3 misdemeanor." N.C. Gen. Stat. § 15A-1344(d) (2019).

¶ 9 Here, one of the probation reports states that "drug paraphernalia was found" during a search of Defendant's residence and that Defendant "received a citation for possession of drug paraphernalia." Possession of drug paraphernalia is a Class 1 misdemeanor (*see* N.C. Gen. Stat. § 90-113.22(b)(2019)). Defendant openly admitted to committing this crime at his hearing.

¶ 10 On appeal, Defendant points out that, while "possession of drug paraphernalia" is a Class 1 misdemeanor, "possession of *marijuana* drug paraphernalia" is a Class 3 misdemeanor. Defendant concedes that he admitted to violating the terms of his probation by committing another crime. But he argues that it is unclear whether he was admitting to a Class 1 misdemeanor or a Class 3 misdemeanor and that there was nothing otherwise in the record to indicate that the paraphernalia found was for something other than marijuana use.

¶ 11 We conclude, however, that there was enough before the trial court to satisfy its determination that Defendant had committed a Class 1 misdemeanor offense. *See State v. Sellers*, 185 N.C. App. 726, 728, 649 S.E.2d 656, 657 (2007) (holding that in-

court admission of a probation violation satisfies due process requirements at a probation revocation hearing). Specifically, the probation violation that Defendant admitted to expressly identifies the crime as "POSSESSION OF DRUG PARAPHERNALIA." This crime is a Class 1 misdemeanor under Section 90-113.22—a statute entitled "possession of drug paraphernalia."

¶ 12 There is a different crime, classified as a Class 3 misdemeanor, entitled "possession of marijuana paraphernalia," codified under Section 90-113.22A. However, the probation report does not state that Defendant committed this crime. We recognize that possessing any type of drug paraphernalia, whether for marijuana use or for use of another drug, use to fall under the Class 1 misdemeanor crime. However, in 2014, our General Assembly created the new (lesser) crime to cover possessing of drug paraphernalia connected with marijuana use only. Based on the fact that the possession of marijuana paraphernalia is now a separate and distinct crime, we find that no ambiguity exists as to what crime the probation officer alleged Defendant had committed. Defendant admitted to the crime as alleged in the probation violation report. Accordingly, the judge properly concluded that Defendant had committed the type of violation that allows for probation revocation.

¶ 13 Finally, we note that the present case is distinguishable from *State v. McNeil*, 262 N.C. App. 340, 821 S.E.2d 862 (2018). In that case, our Court held that an admission during sentencing to a "pre-2014" conviction of "possession of [drug]

paraphernalia" was not, by itself, sufficient to prove that a defendant had committed a crime which would now be classified as a Class 1 misdemeanor, since pre-2014 convictions could include instances where the defendant merely possessed marijuana drug paraphernalia. *Id.* at 343, 821 S.E.2d at 864.

¶ 14 Here, though, Defendant was found to have violated probation well after 2014, after "possession of marijuana drug paraphernalia" became a separate crime.

¶ 15 Based on the foregoing, we hold that the trial court did not abuse its discretion by revoking Defendant's probation, as there was sufficient evidence to show that Defendant willfully violated his probation by committing a Class 1 misdemeanor.

AFFIRMED.

Judges MURPHY and JACKSON concur.

Report per Rule 30(e).