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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-477

No. COA21-741

Filed 5 July 2022

Iredell County, No. 19 CRS 001918; 19 CRS 52203

STATE OF NORTH CAROLINA

v.

LAVAR RONEL JONES

Appeal by Defendant from Judgments entered 26 May 2021 by Judge Joseph N. Crosswhite in Iredell County Superior Court. Heard in the Court of Appeals 11 May 2022.

Attorney General Joshua H. Stein, by Assistant Attorney General John Tillery, for Plaintiff-Appellee the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Candace Washington, for defendant-appellant.

HAMPSON, Judge.

Factual and Procedural Background

¶ 1

Lavar Ronel Jones (Defendant) appeals from Judgments entered 26 May 2021 revoking Defendant's probation on the basis of absconding and activating suspended

sentences for felony larceny, felony possession of stolen goods, and misdemeanor injury to personal property. The Record tends to reflect the following:

¶ 2

On 4 October 2019, pursuant to a plea arrangement, Defendant entered an *Alford*¹ plea to one count each of felony larceny, felony possession of stolen goods, and misdemeanor injury to personal property. As part of the plea arrangement, the trial court entered two separate judgments. In 19 CRS 001918 the trial court entered judgment upon Defendant's *Alford* plea to felony larceny and sentenced Defendant to a suspended term of 8-19 months imprisonment and placed Defendant on supervised probation for a term of 30 months. In 19 CRS 052203, the trial court consolidated judgment upon Defendant's *Alford* pleas to felony possession of stolen goods and misdemeanor injury to personal property, and likewise sentenced Defendant to a term of 8-19 months and placed Defendant on supervised probation for a term of 30 months.

¶ 3

On 6 November 2019, one month after Defendant was placed on supervised probation, Defendant's Probation Officer filed a Violation Report alleging Defendant absconded and failed to report, thereby violating the terms of his probation as follows:

Of the conditions of probation imposed in that judgment, the defendant has willfully violated:

1. Regular Condition of Probation: General Statute 15A-134 (b) (3a) "Not to abscond, by willfully avoiding supervision or by

¹ See *N.C. v. Alford*, 400 U.S. 25, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970).

willfully making the supervisee's whereabouts unknown to the supervising probation officer" in that, THE DEFENDANT WAS CONVICTED AND PLACED ON PROBATION ON 10/4/2019 AND PROBATION WAS TO TRANSFER TO MECKLENBURG COUNTY FOR SUPERVISION. A RESIDENCE INVESTIGATION WAS STARTED IN SAID COUNTY AND REJECTED ON 10/21/2019. PPO IN MECKLENBURG COUNTY WAS ADVISED THAT DEFENDANT DID NOT LIVE AT GIVEN ADDRESS AND NEVER HEARD OF THE DEFENDANT. AS OF THE DATE OF THIS REPORT, THE DEFENDANT ABSCONDED SUPERVISION.

2. "Report as directed by the Court, Commission or the supervising officer to the officer at reasonable times and places . . ." in that THE DEFENDANT FAILED TO REPORT TO PROBATION IN MECKLENBURG COUNTY WITHIN 72HRS AFTER BEING PLACED ON PROBATION.

The Iredell County Superior Court Division issued an Order for Arrest on 6 November 2019.

¶ 4

On 20 April 2021, Defendant's Probation Officer filed a second Violation Report alleging Defendant absconded supervision by willfully avoiding supervision or by making his whereabouts unknown:

Of the conditions of probation imposed in that judgment, the defendant has willfully violated:

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 3/5/2021 THE DEFENDANT FAILED TO REPORT OR CONTACT HIS OFFICER WITHIN 72 HRS AND THE DEFENDANT[S] WHEREABOUT[S] ARE UNKNOWN; THEREFORE ABSCONDING SUPERVISION.

The Iredell County Superior Court Division issued a second Order for Arrest on 20 April 2021.

¶ 5 On 26 May 2021, the trial court conducted a hearing on the two Violation Reports, which proceeded as follows:

[The State]: Your honor, this is Lavar Jones. . . Mr. Jones stands before the Court for two felony probation violations, your Honor.

[The Court] Mr. Darty, does your client acknowledge receiving a copy of the report?

[Defendant's Attorney]: He does.

[The State]: Waive a reading?

[Defendant's Attorney]: Yes.

[The State]: Admit the allegations, including absconding?

[Defendant's Attorney]: He does.

¶ 6 The State summarized the allegations contained in the Reports:

[STATE]: [Defendant] was placed on probation on October 4, 2019, the Honorable Julia Lynn Gullett, Superior Court judge presiding, for the offenses of felony larceny in one case, and in the other case felony possession of stolen goods, injury to personal property. He was given two- eight to 19-month suspended sentences. The judgments, I'll tell you, are silent as to whether they are to run concurrently or consecutively. He subsequently absconded supervision and was -- actually, he didn't report for probation in Mecklenburg County within 72 hours after being placed on probation, and thereafter absconded supervision. That would be the evidence.

THE COURT: Do you know what the recommendation is?

[STATE]: Would be revocation.

THE COURT: [Defendant's Attorney]?

[DEFENDANT'S ATTORNEY]: Yes, your Honor. My client has been here for a long time. He should have more than enough time served for whatever the sentence is imposed. We just ask that you give him the least sentence as possible.

¶ 7

The trial court then ruled:

THE COURT: In this matter then, upon the defendant's admission to violating the terms and conditions of his probation, specifically your admission to the absconding, we'll revoke your probation, place the active sentence in effect, give you any credit for time served. The original judgment was silent. [Defendant's Attorney], do you have a request on that?

[DEFENDANT'S ATTORNEY]: Concurrently?

THE COURT: So allowed. Thank you very much.

¶ 8

On 26 May 2021, the trial court entered a Judgment and Commitment Upon Revocation of Probation in each criminal file finding Defendant violated the conditions of his probation as alleged in the violation reports, which included by absconding. On 2 June 2021, the Defendant, acting pro se, filed a written Notice of Appeal.²

Issue

² We acknowledge Defendant's pro se Notice of Appeal suffers from several technical defects. Defendant has also filed a Petition for Writ of Certiorari requesting review in the case we determine the defective Notice of Appeal deprives us of jurisdiction to review the merits of this appeal. While the State opposes issuance of the Writ, the State has not moved to dismiss the appeal. Our review of the Notice of Appeal reflects its defects are not such that require dismissal—particularly where the State has not moved to dismiss the appeal and has briefed the merits of the case. *See State v. Miller*, 259 N.C. App. 734, 813 S.E.2d 482 (2018). As such, this appeal is properly before us. We dismiss Defendant's alternative petition for writ of certiorari as moot.

¶ 9 The sole issue on appeal is whether Defendant’s admission to the allegations contained in the 2019 and 2021 Violation Reports, which included absconding, supports the trial court’s Judgments revoking Defendant’s probation and ordering the activation of his sentence.

Analysis

¶ 10 “This Court reviews the trial court’s decision to revoke a defendant’s probation for abuse of discretion. The State must produce sufficient evidence to reasonably satisfy the trial court in the exercise of its sound discretion that the defendant willfully violated a valid condition upon which probation can be revoked. An abuse of discretion occurs when a ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision.” *State v. Crompton*, 270 N.C. App. 439, 442, 842 S.E.2d 106, 109 (2020) (citation and quotation marks omitted). “Before revoking or extending probation, the court must, unless the probationer waives the hearing, hold a hearing to determine whether to revoke or extend probation and must make findings to support the decision and a summary record of the proceedings.” N.C. Gen. Stat. § 15A-1345 (2021).

¶ 11 N.C. Gen. Stat. § 15A-1343 sets forth the regular conditions of probation and states in relevant part:

(b) Regular Conditions. — As regular conditions of probation, 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) (2021).

¶ 12 “Regular conditions of probation apply to each defendant placed on supervised probation unless the presiding judge specifically exempts the defendant from one or more of the conditions in open court and in the judgment of the court.” N.C. Gen. Stat. § 15A-1343. “[T]he trial court may only revoke a defendant’s probation 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 the defendant’s whereabouts unknown to the supervising probation officer, in violation of N.C. Gen. Stat. § 15A-1343(b)(3a); or (3) violates any condition after previously serving two periods of confinement in response to violations (CRV) pursuant to N.C. Gen. Stat. § 15A-1344(d2). N.C. Gen. Stat. § 15A-1344(a).” *State v. Krider*, 258 N.C. App. 111, 113-114, 810 S.E.2d 828, 830 (2018).

¶ 13 Here, Defendant contends that the allegations made in the 2019 and 2021

Violation Reports merely allege a failure to report under N.C. Gen. Stat. § 15A-1343(b). “A violation of Section 15A-1343(b)(3), *without more*, would not merit revocation of a defendant’s probation unless the requirements of Section 15A-1344(d2) have also been met.” *Crompton*, 270 N.C. App. at 443, 842 S.E.2d at 110 (emphasis added) (quoting *State v. Williams*, 243 N.C. App. 198, 204, 776, S.E.2d 741, 745 (2015)). However, “where the trial court finds that a defendant has absconded in violation of Section 15A-1343(b)(3a), then the trial court may revoke probation and activate a defendant’s suspended sentence based solely upon this finding.” *Id.*

¶ 14 Defendant contends that, as in *Crompton*, the Defendant similarly “waived a formal reading of the violation reports and admitted to the violations” but in that case the State also presented evidence the probation officer “exhausted all available avenues of contacting Defendant” before filing the violation report. 270 N.C. App. at 448, 842 S.E.2d at 113. Here, Defendant argues without such additional evidence “the State did not present evidence that went beyond showing a technical violation of N.C. Gen. Stat. § 15A-1343(b)(3).”

¶ 15 However, as this Court has recently noted:

Our caselaw is clear that “a waiver of the presentation of the State’s evidence by an in-court admission of the willful or without lawful excuse violation as contained in the written notice (or report) of violation” satisfies due process requirements at a probation revocation hearing. *State v. Sellers*, 185 N.C. App. 726, 728, 649 S.E.2d 656, 657 (2007) (citing *State v. Williamson*, 61 N.C. App. 531, 533-34, 301 S.E.2d 423, 425 (1983)). Put

differently, when a defendant admits to willfully violating a condition of his or her probation in court, the State does not need to present evidence to support the violations. A probation hearing is not a “formal trial” in North Carolina, so the trial court is not required to “personally examine a defendant regarding his admission that he violated his probation.” *Id.* at 727, 649 S.E.2d at 656 (citing *State v. Hewett*, 270 N.C. 348, 353, 154 S.E.2d 476, 479 (1967) (“Proceedings to revoke probation are often regarded as informal or summary.”)).

State v. Brown, 279 N.C. App. 630, 2021-NCCOA-531, ¶ 12.

¶ 16 In this case, Defendant, through counsel, expressly admitted to the allegations in the violation report, including specifically the allegation of absconding. Defendant made no argument at trial that the allegations did not give rise to a revocable violation. Defendant waived any requirement that the State present evidence and at no time asked to submit sworn testimony. Defendant made no argument against revocation. To the contrary, the transcript reflects Defendant admitted absconding and acquiesced to revocation of probation in order to obtain the least possible sentence such that Defendant would, after receiving credit for time served, have already satisfied the active sentence.

¶ 17 Thus, “[w]hen Defendant admitted to absconding, he waived the State’s burden of producing competent evidence of the violation. Defendant cannot now argue that the State failed to meet this burden.” *Brown*, 2021-NCCOA-531, ¶ 13. Therefore, the trial court did not err in finding Defendant had violated the terms of his probation by absconding. Consequently, the trial court did not abuse its discretion by revoking

STATE V. JONES

2022-NCCOA-477

Opinion of the Court

Defendant's probation and activating his sentences.

Conclusion

¶ 18 Accordingly, for the foregoing reasons, we affirm the trial court's 26 May 2021

Judgments revoking Defendant's probation and activating his sentences.

AFFIRMED.

Judges ZACHARY and MURPHY concur.

Report per Rule 30(e).