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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-609

No. COA22-35

Filed 6 September 2022

Beaufort County, No. 16 CRS 50482

STATE OF NORTH CAROLINA

v.

RYAN PATRICK BURBAGE

Appeal by defendant from judgment entered 12 July 2021 by Judge Wayland J. Sermons, Jr., in Beaufort County Superior Court. Heard in the Court of Appeals 10 August 2022.

*Attorney General Joshua H. Stein, by Assistant Attorney General Eric R. Hunt, for the State.*

*Caryn Strickland for defendant-appellant.*

ZACHARY, Judge.

¶ 1

Defendant Ryan Patrick Burbage appeals from a judgment entered upon the trial court's revocation of his probation for absconding from supervision pursuant to N.C. Gen. Stat. § 15A-1343(b)(3a) (2021). After careful review, we affirm the trial court's judgment, but remand for correction of a clerical error.

***Background***

¶ 2

On 8 July 2019, Defendant pleaded guilty to a charge of aggravated impaired driving in Beaufort County Superior Court, pursuant to an agreement with the State. The trial court accepted Defendant's guilty plea and entered a judgment suspending sentence, sentencing Defendant to an active term of 24 months, suspended upon a period of 18 months of supervised probation, with the special condition that Defendant serve 120 days in jail.

¶ 3

On 21 November 2019, Defendant's probation officer filed a probation violation report alleging Defendant's failure to comply with the continuous monitoring system. Consequently, on 13 January 2020, the trial court extended Defendant's probation for 12 months and sentenced Defendant to two days in jail.

¶ 4

Defendant's probation officer again filed violation reports approximately one year later, on 16 and 24 November 2020, alleging that Defendant: was \$617.50 in arrears on court-ordered payments; committed the crimes of obtaining property by false pretenses and felony possession of methamphetamine and paraphernalia; failed to complete the recommended hours of substance abuse treatment; and tested positive for methamphetamine on 13 November 2020. After a hearing on the violations, the trial court entered an order on 9 February 2021 modifying the conditions of Defendant's probation. The court ordered that Defendant serve 90 days in the Misdemeanant Confinement Program and extended Defendant's probation by six months. Upon the State's motion to modify the terms of Defendant's probation,

the trial court entered an order on 12 May 2021 requiring Defendant to immediately enroll in an inpatient substance abuse treatment program upon his release from his 90-day confinement.

¶ 5 On 10 May 2021, Defendant was released from his 90-day confinement. Although he then began the application process at an inpatient care facility, Defendant never actually enrolled. Additionally, Defendant intended to return to his permanent residence upon his release, but his father accidentally burned down the house two weeks before Defendant was to return. As a result, Defendant planned to reside with his grandparents at an approved address. However, that arrangement lasted only a few days. Defendant’s probation officer at the time, Officer Chrystal Matthews, learned on 15 May 2021 from another officer that Defendant was no longer living with his grandparents.

¶ 6 Defendant struggled to find a permanent residence after leaving his grandparents’ house, staying for a few days at a time with various friends and family members. Because the conditions of Defendant’s probation required him to keep his probation officer apprised of his residence, Defendant provided Officer Matthews with the addresses of four locations at which he planned to stay. In addition, because Defendant did not have a permanent residence, Officer Matthews “asked him to text [her] daily where he would be staying.” Defendant did so “sometimes,” while at other times he “forgot.”

¶ 7

On 19 May 2021, Defendant reported to Officer Matthews and tested positive for methamphetamine. Subsequently, Officer Matthews filed a violation report, alleging that Defendant violated the conditions of his probation by (1) leaving his approved residence and failing to provide Officer Matthews with another address or to notify her of the change; (2) testing positive for methamphetamine; and (3) failing to enroll and complete inpatient treatment as required by the 12 May 2021 court order.

¶ 8

On 7 June 2021, Defendant was scheduled to appear in court for a hearing on the probation violation. Defendant maintained that he came to court that morning, but left before his scheduled hearing at 2 p.m. because he was “feeling sick” and wanted to get tested for COVID-19. Officer Matthews later confirmed that Defendant visited an urgent care clinic that afternoon and was tested for COVID-19. Nonetheless, because Defendant left without notifying Officer Matthews or the court of his illness and did not return to the courthouse for his hearing, the trial court issued an order for Defendant’s arrest for failure to appear.

¶ 9

Two days later, on 9 June 2021, Officer Matthews and other law enforcement officers visited Defendant’s four addresses in an unsuccessful attempt to locate him. After exchanging a few text messages, Officer Matthews informed Defendant that in order “to avoid absconding allegations, it would be best to report, and then [they]

could continue with his treatment plan.” Defendant did not report to Officer Matthews that day or any day thereafter.

¶ 10 On 14 June 2021, Officer Matthews informed Defendant via text message that he needed to report to handle the failure to appear charge; she also reminded him that she still did not know where he was staying, and that it was “best for [him] to report so that [his] absconding allegations c[ould] be dismissed in court and [he] c[ould] continue on with [his] treatment plan.” Defendant never responded to Officer Matthews’s message. The same day, Officer Matthews filed a second violation report, alleging that Defendant violated the terms of his probation by absconding.

¶ 11 On 30 June 2021, Officer Matthews received an anonymous phone call informing her of Defendant’s whereabouts. She and other law enforcement officers then went to the location and observed Defendant in the yard. As they arrived, Officer Matthews saw Defendant “run[ ] inside the house.” One of Defendant’s friends told Officer Matthews “that [Defendant] was hiding”; Defendant maintained that he went inside to let his friends know that he “was getting ready to get locked up.” Defendant eventually came out of the house and was arrested.

¶ 12 Defendant appeared for his probation revocation hearing in Beaufort County Superior Court on 12 July 2021. Officer Matthews and Defendant testified. The trial court found that Defendant “willfully violated his probation by absconding and failing

to make himself available for supervision[,]” and therefore revoked his probation and activated his sentence. Defendant timely appealed.

### ***Discussion***

¶ 13 Defendant argues that the trial court abused its discretion by revoking his probation, in that “[t]he allegations and evidence were insufficient to support a finding of absconding.” We disagree.

#### *I. Standard of Review*

¶ 14 “The trial court’s decision to revoke a defendant’s term of probation pursuant to a valid probation violation report is reviewed for abuse of discretion on appeal.” *State v. Crompton*, 380 N.C. 220, 2022-NCSC-14, ¶ 8. “The judge’s finding of such a violation, if supported by competent evidence, will not be overturned absent a showing of manifest abuse of discretion.” *State v. Krider*, 258 N.C. App. 111, 113, 810 S.E.2d 828, 829 (citation omitted), *aff’d per curiam as modified*, 371 N.C. 466, 818 S.E.2d 102 (2018). Further, an alleged violation of a condition of probation need not be proven beyond a reasonable doubt; the evidence need only “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.” *Id.* at 112–13, 810 S.E.2d at 829 (citation omitted).

#### *II. Analysis*

¶ 15 “Before revoking . . . probation, the court must, unless the probationer waives the hearing, hold a hearing to determine whether to revoke . . . probation and must make findings to support the decision and a summary record of the proceedings.” N.C. Gen. Stat. § 15A-1345(e). “A proceeding to revoke probation is often regarded as informal or summary, and the court is not bound by strict rules of evidence.” *State v. Faulkner*, 250 N.C. App. 412, 419, 792 S.E.2d 836, 841 (2016) (citation omitted). “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) (citation omitted), *supersedeas and disc. review denied*, 370 N.C. 576, 809 S.E.2d 599 (2018).

¶ 16 A trial court’s authority to revoke probation is statutorily limited. *See* N.C. Gen. Stat. § 15A-1344(a). Absconding, as described in N.C. Gen. Stat. § 15A-1343(b)(3a), is one of the permitted bases for revocation of probation. *Id.* “[A] defendant absconds when he willfully makes his whereabouts unknown to his probation officer, and the probation officer is unable to contact the defendant.” *State v. Melton*, 258 N.C. App. 134, 138, 811 S.E.2d 678, 681 (2018).

¶ 17 “[E]stablishing a defendant’s willful intent is seldom provable by direct evidence and must usually be shown through circumstantial evidence.” *State v. Crompton*, 270 N.C. App. 439, 443, 842 S.E.2d 106, 110 (2020) (citation and internal

quotation marks omitted), *aff'd*, 380 N.C. 220, 2022-NCSC-14. “In determining the presence or absence of the element of intent, the fact finder may consider the acts and conduct of the defendant and general circumstances existing at the time of the charged probation violation.” *Id.*

¶ 18 In the instant case, Officer Matthews filed a violation report on 14 June 2021, alleging Defendant’s violation of a condition 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, THE OFFENDER FAILED TO SHOW UP FOR SUPERIOR COURT ON MONDAY 06/07/2021. [PROBATION OFFICER] CHECKED ALL ADDRESSES THAT HAVE BEEN GIVEN TO ME BY THE OFFENDER . . . . OFFENDER IS NOT RESPONDING OR CALLING OFFICER VIA TELEPHONE EITHER. OFFENDER IS AVOIDING SUPERVISION AND THUS HAS ABSCONDED PROBATION SUPERVISION AS OF THE DATE OF THIS REPORT.

¶ 19 Defendant contends that “the violation report and testimony establish, at most, that [he] committed technical violations and do not raise a reasonable inference that he willfully absconded.” However, the record belies Defendant’s contention.

¶ 20 After careful review of the record, we conclude that there was sufficient evidence to satisfy the trial court that Defendant willfully absconded from supervision on 14 June 2021, thereby violating a valid condition upon which his

sentence was suspended. Without reciting every event prior to the filing of the violation report, it will suffice to note that: (1) Defendant had a reliable method of communication with Officer Matthews through text messaging, and by which Officer Matthews repeatedly contacted him during the period in question, to no avail; (2) Defendant failed to report to Officer Matthews on 7 June and did not return to court to handle his probation violation; (3) until Defendant's arrest, Officer Matthews did not see Defendant after the morning of 7 June; (4) Defendant knew that he had an outstanding order for his arrest for failure to appear as a result of his absence in court on 7 June; (5) Defendant again failed to report on 9 June, even after Officer Matthews advised Defendant that he should report "to avoid absconding allegations"; (6) on 9 June, Officer Matthews unsuccessfully attempted to locate Defendant at the four addresses he provided, as well as hospitals and jails; (7) on 14 June, Officer Matthews contacted Defendant's family members to see if they were aware of Defendant's whereabouts, and was once again unable to determine Defendant's location; and (8) Defendant never responded to Officer Matthews's request for his whereabouts on 14 June.

¶ 21 This is ample evidence from which the trial court could conclude that Defendant absconded; he received repeated text messages from Officer Matthews and was aware that she was trying to locate him, and he made the decision not to appear or contact her. Moreover, Defendant offered no reason why he was unable to appear

or contact Officer Matthews, or otherwise “demonstrate that his noncompliance was not ‘willful.’” *Id.* at 444, 842 S.E.2d at 110.

¶ 22 In sum, Defendant’s failure to make himself available for supervision was willful; Defendant simply chose not to submit to supervision, and so avoided it. *See Melton*, 258 N.C. App. at 138, 811 S.E.2d at 681 (“[A] defendant absconds when he willfully makes his whereabouts unknown to his probation officer, and the probation officer is unable to contact the defendant.”). Additionally, Defendant’s acts constitute more than a mere technical violation of his probation, or a failure to appear for an appointment; Defendant’s failure to make himself available for supervision or his whereabouts known was continuing and willful. *Cf. State v. Johnson*, 246 N.C. App. 139, 146, 783 S.E.2d 21, 26 (2016) (concluding that the trial court abused its discretion in finding that the defendant had absconded where the defendant’s whereabouts were never unknown to his probation officer and he missed only one meeting after notifying his probation officer the day before that he could not attend).

¶ 23 We thus conclude that the evidence presented at the hearing was sufficient to reasonably satisfy the trial court that Defendant had willfully absconded on 14 June 2021. The trial court, in the exercise of the court’s sound discretion, appropriately “consider[ed] the acts and conduct of . . . [D]efendant and general circumstances existing at the time of the charged probation violation[.]” *Crompton*, 270 N.C. App. at 443, 842 S.E.2d at 110, in support of its determination that Defendant “willfully

violated his probation by absconding and failing to make himself available for supervision.”

¶ 24 Defendant further contends that the trial court erred by considering events which occurred after the dates contained in the 14 June 2021 report. As explained above, there was sufficient competent evidence to support the trial court’s determination that Defendant willfully absconded in violation of N.C. Gen. Stat. § 15A-1343(b)(3a) based on the dates alleged in the violation report—7 June to 14 June 2021.

¶ 25 While not necessary to justify the trial court’s determination that Defendant willfully absconded from supervision, the measures that Defendant took after the dates alleged in the violation report lend support to the trial court’s determination that Defendant willfully intended to abscond. In the two weeks that followed the filing of the 14 June 2021 report, Defendant failed to keep Officer Matthews apprised of his location and did not maintain contact with her. Indeed, Officer Matthews ultimately learned of Defendant’s location from an anonymous phone call. Moreover, when Officer Matthews and law enforcement officers located Defendant on 30 June 2021, he ran rather than submit, and a friend reported that he was hiding. Defendant’s actions after 14 June 2021 clearly evince his intent, which was to avoid supervision.

### *III. Clerical Error*

¶ 26 Finally, Defendant argues that this matter “should be remanded to correct [a] clerical error[] in the judgment upon revocation of probation.” The State acknowledges this error, and “does not object to the remand of this case for correction” of the error in the judgment.

¶ 27 “When, on appeal, a clerical error is discovered in the trial court’s judgment or order, it is appropriate to remand the case to the trial court for correction because of the importance that the record speak the truth.” *Trent*, 254 N.C. App. at 822, 803 S.E.2d at 232–33 (citation omitted).

¶ 28 Here, the trial court found that Defendant had violated various conditions of his probation, as set forth in the 19 May 2021 violation report and the 14 June 2021 violation report. The trial court checked the boxes indicating that Defendant’s probation could only be revoked for committing a criminal offense or absconding, as well as the box stating that “[e]ach violation is, in and of itself, a sufficient basis upon which this Court should revoke probation and activate the suspended sentence.” However, Defendant’s probation could only be properly revoked on the basis of a finding that he absconded from supervision. Thus, the trial court should not have checked the box stating that “[e]ach violation is, in and of itself, a sufficient basis upon which this Court should revoke probation and activate the suspended sentence.”

¶ 29 We therefore remand to the trial court for correction of this clerical error. *See, e.g., State v. Newsome*, 264 N.C. App. 659, 666, 828 S.E.2d 495, 500 (2019) (remanding

for the correction of a clerical error where the trial court selected the box that “[e]ach violation . . . in and of itself was [a] sufficient basis” when revoking the defendant’s probation because some of the alleged violations did not rise to the level of absconding and were not criminal offenses).

### ***Conclusion***

¶ 30 For the foregoing reasons, we conclude that “there was sufficient competent evidence to establish [D]efendant’s willful violation of N.C. Gen. Stat. § 15A-1343(b)(3a), a valid condition of his probation. Therefore, the trial court did not abuse its discretion in finding that [D]efendant willfully absconded from supervision, or in revoking his probation on that basis.” *Trent*, 254 N.C. App. at 821, 803 S.E.2d at 232.

¶ 31 Accordingly, we affirm the trial court’s judgment. However, we remand for the limited purpose of correcting the clerical error described above.

AFFIRMED IN PART; REMANDED FOR CORRECTION OF CLERICAL ERROR.

Judges WOOD and GRIFFIN concur.

Report per Rule 30(e).