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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-496

Filed 07 March 2023

Moore County, Nos. 19 CRS 53344, 20 CRS 51543, 20 CRS 51964

STATE OF NORTH CAROLINA

v.

SHANNON MICHELLE McCALL

Appeal by Defendant from Judgments entered 15 December 2021 by Judge James M. Webb in Moore County Superior Court. Heard in the Court of Appeals 30 November 2022.

Attorney General Joshua H. Stein, by Assistant Attorney General Victor A. Unnone, III, for the State.

Mary McCullers Reece for Defendant-Appellant.

HAMPSON, Judge.

Factual and Procedural Background

Shannon Michelle McCall (Defendant) appeals from Judgments entered 15 December 2021 revoking Defendant's probation on the basis of absconding supervision and activating sentences for Misdemeanor Maintaining a Vehicle or Dwelling for Sale of a Controlled Substance, two counts of Possession of Drug

Paraphernalia, Felony Possession of a Schedule II Controlled Substance, Simple Possession of a Schedule IV Controlled Substance, and Felony Possession of Methamphetamine. The Record before us tends to reflect the following:

On 2 August 2021, pursuant to a plea arrangement, Defendant entered guilty pleas to Misdemeanor Maintaining a Vehicle or Dwelling for Sale of a Controlled Substance, two counts of Possession of Drug Paraphernalia, Simple Possession of a Schedule IV Controlled Substance, Possession of Methamphetamine, and Possession of a Schedule II Controlled Substance. The trial court consolidated these convictions into three Judgments and sentenced Defendant to two consecutive sentences of 6 to 17 months imprisonment in file numbers 19 CRS 53344 and 20 CRS 51964 followed by a third consecutive 45-day sentence in file number 20 CRS 51543. The trial court suspended these sentences and placed Defendant on supervised probation for 36 months. As an additional special condition of probation, Defendant was required to submit herself to an inpatient substance abuse treatment facility at the Black Mountain substance abuse treatment facility (Black Mountain).

On 8 November 2021, Defendant's Probation Officer filed three Violation Reports¹ alleging Defendant willfully avoided supervision, thereby absconding. Specifically, the Reports alleged Defendant violated the terms of her probation, as follows:

¹ The Violation Reports filed in each case contain the same allegations.

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 11/03/2021, THE DEFENDANT LEFT HER PLACE OF RESIDENCE AT THE BLACK MOUNTAIN SUBSTANCE ABUSE TREATMENT FACILITY WITHOUT PRIOR APPROVAL OR KNOWLEDGE OF HER PROBATION OFFICER AND FAILED TO MAKE HER WHEREABOUTS KNOWN, MAKING HERSELF UNAVAILABLE FOR SUPERVISION AND THEREBY ABSCONDING SUPERVISION. AS OF 11/08/21, THE DEFENDANT’S WHEREABOUTS ARE UNKNOWN AND ALL EFFORTS TO LOCATE THE DEFENDANT HAVE BEEN UNSUCCESSFUL.

2. Condition of Probation “Attend or reside in a residential program for the specified period of time and obey all rules and regulations of the program until discharge. . .” in that ON 11/03/2021, THE DEFENDANT LEFT THE BLACK MOUNTAIN SUBSTANCE ABUSE TREATMENT FACILITY FOR WOMEN WITHOUT PRIOR APPROVAL OR KNOWLEDGE OF HER PROBATION OFFICER.

On 15 December 2021, the trial court conducted a hearing on the Violation Reports. Defendant waived a formal reading and denied the allegations contained in the three Violation Reports. Defendant’s Probation Officer provided the following testimony regarding the allegations contained in the Violation Reports:

Defendant reported to Black Mountain on 25 October 2021. However, on 3 November 2021, Defendant’s case worker informed Defendant’s Probation Officer that Defendant left Black Mountain without permission. Defendant’s Probation Officer alleged they attempted to locate Defendant by visiting four of Defendant’s

known addresses over the following week. However, Defendant's Probation Officer was unable to locate Defendant.

On 5 November 2021, Defendant's Probation Officer visited a former address of Defendant's and spoke with the homeowner. The Probation Officer left their contact information and a message for Defendant as the homeowner reported being in contact with Defendant. Later that day, Defendant received the message and borrowed a cellphone to leave a voicemail for her Probation Officer. Defendant apologized for leaving Black Mountain and informed her Probation Officer she would return to Moore County "within the next day or two." However, Defendant called from a blocked number and did not provide a call back number, request assistance in returning to Moore County, or provide her Probation Officer with information regarding her exact location. On 9 November 2021, Defendant returned to Moore County. Defendant contacted her Probation Officer and turned herself in to her Probation Officer's custody.

Defendant testified she left Black Mountain because she was frustrated with the program and had been attacked and robbed by people in the program. Over the next 4 to 5 days, Defendant hitchhiked to Hickory, North Carolina. Defendant further testified she learned her Probation Officer had visited one of her Moore County residences and was given the Probation Officer's cellphone number. Defendant testified she attempted to call her Probation Officer twice—once leaving a message to the cellphone number she was provided and calling from a blocked

number using someone else's cellphone. When Defendant reached Hickory, she called a friend to pick her up and bring her back to Moore County. On cross-examination, Defendant acknowledged she left Black Mountain without permission.

At the conclusion of the hearing, the trial court announced:

The Court finds the [Defendant] unlawfully, willfully without legal justification violated the terms and conditions of her probation as is alleged in the violation report, and the Court specifically finds that [Defendant] absconded supervision.

At 11:13 a.m., after rendering its decision, the trial court recessed. Shortly thereafter, the trial court reconvened, and at 11:45 a.m., Defendant, through counsel, provided oral Notice of Appeal. The trial court accepted Defendant's notice and appointed the appellate defender. The hearing concluded at 11:47 a.m.

The same day, the trial court entered written Judgments and Commitments Upon Revocation of Probation in 19 CRS 53344, 20 CRS 51543, and 20 CRS 51964. The trial court revoked Defendant's probation and activated Defendant's sentences. The trial court reduced Defendant's sentences in 19 CRS 53344 and 20 CRS 51964 from consecutive 6 to 17 month sentences to consecutive 4 to 14 month sentences. The trial court maintained Defendant's 45-day term in 20 CRS 51543.

Appellate Jurisdiction

Defendant has filed a Petition for Writ of Certiorari requesting appellate review in the event her oral Notice of Appeal was untimely and insufficient to confer jurisdiction upon this Court. The North Carolina Rules of Appellate Procedure

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provide that a defendant may appeal from a judgment in a criminal case by “(1) giving oral notice of appeal at trial, or (2) filing notice of appeal with the clerk of superior court and serving copies thereof upon all adverse parties[.]” N.C.R. App. P. 4(a)(1)-(2). “The Rule permits oral notice of appeal, but only if given at the time of trial[.]” *State v. Oates*, 366 N.C. 264, 268, 732 S.E.2d 571, 574 (2012).

Here, the Record reflects that after rendering its judgment, the trial court took a short recess and came back into session shortly thereafter when Defendant provided oral Notice of Appeal, which the trial court readily accepted, including appointing the appellate defender, entering appellate entries, and denying bond pending appeal. On the facts of this case, with no indication the trial court had started another trial or adjourned court or otherwise viewed Defendant’s case as fully concluded, we deem Defendant’s oral Notice of Appeal timely. Thus, we dismiss Defendant’s Petition for Writ of Certiorari as moot.

Issue

The sole issue on appeal is whether there was sufficient evidence on which the trial court could find Defendant willfully avoided supervision and made her whereabouts unknown to support revocation of Defendant’s probation on the basis of absconding.

Analysis

“[I]n a probation revocation, the standard is that the evidence be such as to reasonably satisfy the [trial court] in the exercise of [its] sound discretion that the

defendant has willfully violated a valid condition [upon which probation can be revoked].” *State v. Harris*, 361 N.C. 400, 404, 646 S.E.2d 526, 529 (2007) (citation and quotation marks omitted). We review a trial court’s decision to revoke a defendant’s probation for an abuse of discretion. *State v. Miller*, 205 N.C. App. 291, 293, 695 S.E.2d 149, 150 (2010) (citation omitted). 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. Maness*, 363 N.C. 261, 279, 677 S.E.2d 796, 808 (2009) (citation and quotation marks omitted).

N.C. Gen. Stat. § 15A-1343(b) sets forth the regular conditions of probation and includes 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). “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.” *Id.* Here, Defendant was subject to regular conditions of probation including the requirement to not abscond.

The 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 pursuant to N.C. Gen. Stat. § 15A-1344(d2).” N.C. Gen. Stat. § 15A-1344(a) (2021).

In this case, the trial court revoked Defendant’s probation on the basis Defendant absconded by willfully avoiding supervision or willfully made her whereabouts unknown to her supervising probation officer pursuant to Section 15A-1343(b)(3a). On appeal, Defendant contends the evidence was insufficient to show her actions were willful, and, thus, the State failed to present sufficient evidence Defendant willfully absconded supervision. Therefore, Defendant asserts the trial court abused its discretion in revoking probation on the basis of absconding.

“By definition, a defendant ‘absconds’ if [they make] willful attempts to conceal [their] whereabouts, and the probation officer is unable to contact the defendant as a result.” *State v. Rucker*, 271 N.C. App. 370, 375, 843 S.E.2d 710, 714, (2020) (citing

N.C. Gen. Stat. §15A-1343(b)(3a)). “Ordinarily, [w]ilful as used in criminal statutes means the wrongful doing of an act without justification or excuse, or the commission of an act purposely and deliberately in violation of law.” *State v. Brackett*, 306 N.C. 138, 142, 291 S.E.2d 660, 662 (1982) (citation and quotation marks omitted). It is a “defendant’s responsibility to keep his probation officer apprised of his whereabouts.” *State v. Trent*, 254 N.C. App. 809, 821, 803 S.E.2d 224, 232 (2017), *disc. rev. denied*, 370 N.C. 576, 809 S.E.2d 599 (2018).

In contending the evidence in this case was insufficient to support the trial court’s determination Defendant willfully absconded supervision, Defendant analogizes the facts of this case to those of *State v. Melton*, 258 N.C. App. 134, 811 S.E.2d 678 (2018). In *Melton*, the defendant’s probation officer alleged the defendant absconded after failing to attend five scheduled meetings. *Id.* at 135, 811 S.E.2d at 680. The probation officer testified that when the defendant failed to appear, she tried to call and visit the defendant multiple times over the course of two days and left messages with the defendant’s parents. *Id.* The defendant testified she did not willfully abscond because, at the time of the alleged violation: her cell phone was missing; she was not at home when the officer visited; her probation officer left no messages at the home; her parents told her that the officer had not come by or called her; and she had visited the officer days before, so it did not otherwise occur to her to contact her officer. *Id.* at 139, 811 S.E.2d at 682. Crucially, there was no evidence Defendant was, in fact, aware her probation officer was attempting to contact her

during this short window of time. *Id.*

Our Court in *Melton* observed:

Although [the probation officer] testified that she attempted to call and visit defendant, and left messages with defendant's parents for defendant to contact her, there was no showing that a message was given to defendant or, more generally, that defendant knew [the officer] was attempting to contact her. Thus, although there was competent evidence that [the officer] attempted to contact defendant, there was insufficient evidence that defendant willfully refused to make herself available for supervision[.]

Id. This Court concluded:

Where, as here, the State's evidence only includes that a defendant failed to attend scheduled meetings, and the probation officer is unable to reach a defendant after merely two days of attempts, only leaving messages with a defendant's relatives, the evidence is insufficient to reasonably satisfy a trial judge that defendant willfully failed to keep her probation officer informed of her whereabouts.

Id. at 140, 811 S.E.2d at 682. As such, this Court reversed the trial court's judgment, holding the trial court abused its discretion by revoking defendant's probation. *Id.*

Unlike in *Melton*, the evidence in this case reflects Defendant left Black Mountain—thereby violating a special condition of probation—and did so knowingly and without permission. After leaving Black Mountain, Defendant hitchhiked to Hickory over the course of 4 to 5 days, never informing her Probation Officer of her location. The evidence is undisputed Defendant was made aware her Probation Officer was seeking to contact Defendant. Defendant only attempted to contact the Probation Officer using someone else's cellphone and blocked the number. Even upon

reaching Hickory, Defendant disclosed her location to a friend in order to procure assistance returning home, but again, did not provide her Probation Officer with her location or contact information. This evidence is sufficient to show Defendant purposefully left supervision and deliberately concealed her whereabouts such that her Probation Officer was unable to contact her for several days despite knowing the Probation Officer was attempting to contact her.

Thus, the evidence in this case was sufficient to reasonably satisfy the trial court Defendant willfully avoided supervision by making her whereabouts unknown to her Probation Officer. Therefore, on the facts of this case, the trial court did not err in concluding Defendant violated a term of her probation upon which probation may be revoked pursuant to N.C. Gen. Stat. § 15A-1343(b)(3a) by absconding. Consequently, the trial court did not abuse its discretion by revoking Defendant's probation and activating the three sentences.

Conclusion

Accordingly, for the foregoing reasons, we affirm the trial court's 15 December 2021 Judgments revoking Defendant's probation and Order activating her sentences.

AFFIRMED.

Judges DILLON and MURPHY concur.

Report per Rule 30(e).