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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-468

Filed 06 June 2023

Sampson County, Nos. 19CRS051140-41

STATE OF NORTH CAROLINA

v.

MARIA IVETT DELEON, Defendant.

Appeal by Defendant from judgments entered 5 January 2022 by Judge Henry L. Stevens in Sampson County Superior Court. Heard in the Court of Appeals 7 March 2023.

Attorney General Joshua H. Stein, by Assistant Attorney General Farrah R. Raja and Special Deputy Attorney General Derek L. Hunter, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Candace Washington, for Defendant-Appellant (allowed as substitute counsel by order filed 13 July 2022 and filed Defendant-Appellant's Reply Brief on 3 January 2023; Record on Appeal and Defendant-Appellant's Brief filed by Sigler Law, PLLC, by Kerri L. Sigler, allowed to withdraw as attorney of record by order filed 13 July 2022).

RIGGS, Judge.

Defendant Maria Ivett DeLeon appeals from two judgments revoking her probation and instituting active sentences for attempted trafficking in

methamphetamines, possession with intent to manufacture, sell, and deliver cocaine, and driving while license revoked – impaired revocation. On appeal, Ms. DeLeon argues that the trial court abused its discretion by revoking her probation for absconding under N.C. Gen. Stat. § 15A-1343(b)(3a) (2021) absent sufficient evidence of willfulness. After careful review, we affirm the trial court’s judgments revoking her probation.

I. FACTUAL AND PROCEDURAL HISTORY

Ms. DeLeon pleaded guilty to one count each of attempted trafficking in methamphetamine, possession with intent to manufacture, sell, and deliver cocaine, and driving while license revoked – impaired revocation on 20 April 2020 in Sampson County Superior Court. Pursuant to the plea agreement, the State dismissed several other drug-related charges and the trial court sentenced Ms. DeLeon to consecutive terms of 19 to 35 and 8 to 19 months’ imprisonment on two judgments; these sentences were suspended for 36 months of supervised probation.

During probation intake, Ms. DeLeon listed her address as 203 Blue Ridge Drive, Dudley, North Carolina—a residence located in Wayne, rather than Sampson, County. The probation offices for Sampson and Wayne Counties therefore began the process of transferring Ms. DeLeon’s probation from the former to the latter. Ms. DeLeon was given reporting instructions telling her to contact the probation office in Wayne County, and she called that office on 27 April 2020.

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Officers with Wayne County visited the 203 Blue Ridge Drive residence on 4 May 2020, found no one home, and left a note with contact information and instructions. Officers purportedly made another attempt to contact Ms. DeLeon at that address on 6 May 2020, but were greeted instead by Ms. DeLeon's mother, Maria Fonseca. Ms. Fonseca informed the officers that Ms. DeLeon did not live at that residence and had not been seen since her release from jail. The officers left a door tag with contact information and instructed Ms. Fonseca to call the Wayne County probation office if she heard from Ms. DeLeon.

Probation officers made several other attempts to locate Ms. DeLeon. They called the phone numbers provided by Ms. DeLeon at intake four times; both numbers were answered by persons other than Ms. DeLeon, one of whom stated that she did not know who Ms. DeLeon was. Officers searched arrest records and called the Sampson County jail, but neither effort proved fruitful. Calls to hospitals in Sampson and Wayne Counties likewise came up short. Probation officers reviewed some of Ms. DeLeon's prior addresses but ultimately concluded that she had moved and thus were too outdated to be useful. Having heard nothing from Ms. DeLeon, her Sampson County probation officer filed violation reports on 2 September 2020 alleging Ms. DeLeon had absconded.

The trial court held a probation revocation hearing on 3 January 2022. Ms. DeLeon appeared at the hearing and, through counsel, denied the allegations in the violation reports. Angela Stewart, a probation officer with the Department of Public

Safety appearing in lieu of Ms. DeLeon's absent probation officer, testified to the contents of Ms. DeLeon's casefile consistent with the above recitation of the facts. Ms. Fonseca testified for the defense, inconsistently stating that: (1) she was certain no probation officers ever came to her home to ask about Ms. DeLeon; and (2) she could not remember if any officers visited to discuss Ms. DeLeon's whereabouts. She also testified unequivocally that Ms. DeLeon never lived at the 203 Blue Ridge Drive residence.

At the conclusion of the hearing, the trial court revoked Ms. DeLeon's probation for absconding as alleged in the violation reports. Ms. DeLeon gave oral notice of appeal, and written judgments revoking her probation were entered 5 January 2022.

II. ANALYSIS

Ms. DeLeon's sole argument on appeal concerns whether the evidence presented was sufficient to establish that she either "*willfully* avoid[ed] supervision" or "*willfully* ma[de] the defendant's whereabouts unknown to the supervising probation officer[.]" N.C. Gen. Stat. § 15A-1343(b)(3a) (emphasis added). Specifically, Ms. DeLeon contends that the willfulness element cannot be proven because: (1) there was no evidence that Ms. DeLeon was aware probation officers were looking for her; and (2) she made probation officers generally aware of her location by calling the Wayne County probation office shortly after her intake in Sampson County. We disagree.

A. Standard of Review

Orders revoking probation are reviewed for abuse of discretion. *State v. Miller*, 205 N.C. App. 291, 293, 695 S.E.2d 149, 150 (2010). Reversal under this standard is proper if the trial court's order "is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision." *State v. Newsome*, 264 N.C. App. 659, 661, 828 S.E.2d 495, 498 (2019) (citation and quotation marks omitted). The allegations "need not be proven beyond a reasonable doubt," *State v. Murchison*, 367 N.C. 461, 464, 758 S.E.2d 356, 358 (2014) (citation and quotation marks omitted), because "[a] probation revocation proceeding is not a formal criminal prosecution and is often regarded as informal or summary," *id.* (citation and quotation marks omitted). Instead, the evidence need only "reasonably satisfy the judge in the exercise of his sound discretion that the defendant has willfully violated a valid condition of probation[.]" *State v. Young*, 190 N.C. App. 458, 459, 660 S.E.2d 574, 576 (2008) (citation and quotation marks omitted).

B. Sufficiency of Evidence

A defendant's probation may be revoked for absconding if "[s]he willfully avoids supervision or willfully makes h[er] whereabouts unknown to h[er] probation officer." *Newsome*, 264 N.C. App. at 661-62, 828 S.E.2d at 498 (citing N.C. Gen. Stat. § 15A-1343(b)(3a)). The defendant is responsible for keeping the probation office informed as to her location. *State v. Trent*, 254 N.C. App. 809, 821, 803 S.E.2d 224, 232 (2017). Direct evidence of willfulness is not required and is often shown by

circumstantial evidence. *State v. Walston*, 140 N.C. App. 327, 332, 536 S.E.2d 630, 633 (2000).

Ms. DeLeon argues that any absconsion was not willful because there was no evidence introduced showing she was aware that her probation officers were looking for her; instead, the evidence demonstrated that Ms. DeLeon had contacted the Wayne County probation office by phone and thus attempted to make herself available and known to her probation officers. Indeed, this Court has previously held that lack of such notice to the probationer may preclude a showing of willfulness when viewed in light of the other record evidence. *State v. Krider*, 258 N.C. App. 111, 115-16, 810 S.E.2d 828, 830-31 (2018); *State v. Melton*, 258 N.C. App. 134, 139-40, 811 S.E.2d 678, 682-83 (2018). Similarly, we have held that the State adequately failed to prove willfulness on facts that showed a probation officer was able to maintain telephone contact with the defendant. *State v. Williams*, 243 N.C. App. 198, 198-99, 776 S.E.2d 741, 742 (2015). However, we have also held that the trial court could properly find willfulness under facts showing the defendant gave incorrect contact information at the outset of intake and the defendant's family members or acquaintances told the probation officers that they did not know the defendant's location. *State v. Mills*, 270 N.C. App. 130, 133-34, 840 S.E.2d 293, 295-96 (2020); *State v. Rucker*, 271 N.C. App. 370, 377, 843 S.E.2d 710, 715 (2020). *See also Trent*, 254 N.C. App. at 818-89, 803 S.E.2d at 230-31 (holding evidence supported absconsion violation because the probation officer visited the defendant's home on two occasions

over two weeks and was twice told by the defendant's wife that she did not know the defendant's whereabouts).

In *Krider*, the officer visited the address provided by the defendant and was greeted by an unknown, unidentified elderly woman who said the defendant did not live there. 258 N.C. App. at 115-16, 810 S.E.2d at 831. The probation officer made no further attempts to contact the defendant. *Id.* at 116, 810 S.E.2d at 831. The defendant, however, testified—without cross-examination or impeachment by the State—that he unsuccessfully attempted to call his probation officer several times. *Id.* at 117, 810 S.E.2d at 832. And, after the probation violation report was filed: (1) the probation officer met with the defendant at the home; (2) the defendant was in regular contact with his probation officer; and (3) the defendant had completed substance abuse treatment, attained gainful employment, and was making payments towards his arrears. *Id.* at 116, 810 S.E.2d at 831. We held that this evidence was insufficient to show willfulness on the absconsion violation. *Id.*

Similarly, in *Melton*, we held that testimony from the probation officer that she attempted telephone calls to family and home visits to the defendant's residence during a two-day period was inadequate to establish a willful absconding violation. 258 N.C. App. at 139, 811 S.E.2d at 682. Additional testimony from the defendant showed that: (1) she had not called because her cell phone was missing; (2) she was not at home when the probation officer visited; (3) the probation officer left no notes at the home; (4) her parents never conveyed the probation officer's message to her;

and (5) she had just met with her probation officer a week prior. *Id.* Thus, there was no evidence of willfulness because “there was no showing that a message was given to defendant or, more generally, that defendant knew [her probation officer] was attempting to contact her.” *Id.*

We reached different results in *Mills*, *Rucker*, and *Trent*. In *Mills*, the defendant made no attempts to contact his probation office and provided inaccurate contact information on his intake form. 270 N.C. App. at 134, 840 S.E.2d at 295. When his probation officer visited the location provided, an unidentified person answered the door and stated they did not know the defendant. *Id.* The probation officer also called the phone number from the intake form, which was answered by the defendant’s sister; she told the officer that she had not heard from the defendant and was unaware he had been released from prison. *Id.* The defendant offered no evidence at the probation hearing, and we held that willfulness had been adequately shown because “[t]he evidence demonstrated that [the] [d]efendant failed to provide accurate contact information, made his whereabouts unknown, failed to make himself available for supervision, actively avoided supervision, and knowingly failed to make contact with [the probation officer] after release.” *Id.* at 134, 840 S.E.2d at 295-96.

In *Rucker*, the defendant was placed on probation in Gaston County but gave a Lincoln County address at intake. 271 N.C. App. at 371, 843 S.E.2d at 711. Lincoln County officers attempted six unsuccessful home visits; on one occasion, persons familiar with the defendant told the officers that he was no longer living there and,

on a later visit, stated the defendant had resided there but planned to move. *Id.* at 371-72, 843 S.E.2d at 711-12. A door tag with contact instructions went ignored. *Id.* at 371-72, 843 S.E.2d at 712. And, though the defendant had three phone calls with his probation officer, he repeatedly failed to keep her informed of his whereabouts and missed a scheduled home visit. *Id.* at 371-72, 843 S.E.2d at 711-12. Based on these facts, we distinguished *Krider* and held that “defendant was properly found to have absconded because his whereabouts were truly unknown to probation officers.” *Id.* at 377, 843 S.E.2d at 715 (citations omitted).

We reached a similar holding in *Trent*, where a probation officer arrived at the defendant’s home when he was not present. 254 N.C. App. at 818, 803 S.E.2d at 230. The probation officer instead met with the defendant’s wife, who stated that her husband had left a day earlier with her car and debit card without her permission. *Id.* at 818, 803 S.E.2d at 230-31. When the probation officer returned almost two weeks later, the defendant’s wife reported that he still had not returned and that she did not know where he was. *Id.* at 818, 803 S.E.2d at 231. We held that this was sufficient evidence to support a willful absconding violation because the probation officer did not know where the defendant was and “had absolutely no means of contacting defendant during his unauthorized trip.” *Id.* at 818-19, 803 S.E.2d at 231 (citation omitted). We ultimately affirmed the trial court’s order because the defendant’s evidence did not rebut the showing by the State, instead confirming that

he never contacted his probation officer despite being informed of these attempted contacts. *Id.* at 819-21, 803 S.E.2d at 231-32.

We believe *Mills*, *Rucker*, and *Trent* to be more analogous in this case than *Krider* and *Melton*. Unlike those latter two cases, but as in *Mills*, 270 N.C. App. at 134, 840 S.E.2d at 295, Ms. DeLeon never provided accurate contact and location information to her probation officer. When probation officers attempted to meet her at her home, Ms. DeLeon's mother informed them that she had never lived there. *See Rucker*, 271 N.C. App. at 377, 843 S.E.2d at 715 ("On two of those home visits, contrary to *Krider*, individuals who *knew* defendant informed the officers that defendant no longer lived at the residence or that he had plans to move from the residence."). The officers also left notes or a door tag on each visit to Ms. Fonseca's home. *Compare Krider*, 258 N.C. App. at 115-16, 810 S.E.2d at 831 (holding no willful absconsion when evidence showed the probation officer made a single visit to the home and spoke with a resident without leaving a note or instructions to contact the probation office), *and Melton*, 258 N.C. App. at 139, 811 S.E.2d at 682 (holding the same in part based on testimony that the probation officer "left no messages at the home"), *with Rucker*, 271 N.C. App. at 377, 843 S.E.2d at 715 (holding evidence that probation officers left a door tag with contact instructions at the defendant's reported address supported a finding of willfulness).

Other key facts distinguish *Krider* and *Melton*, including that probation officers took additional efforts to locate Ms. DeLeon over a period of months by: (1)

calling the Sampson County jail; (2) searching arrest records; (3) contacting hospitals; and (4) researching prior addresses. *See State v. Crompton*, 270 N.C. App. 439, 448, 842 S.E.2d 106, 113 (2020) (affirming a revocation order for willfully absconding where the probation officer “went to [the] [d]efendant’s last known residence twice, called all of [the] [d]efendant’s references and contact numbers, called the local hospital, checked legal databases to see whether [the] [d]efendant was in custody, and called the vocational program [the] [d]efendant was supposed to attend”), *aff’d*, 380 N.C. 220, 868 S.E.2d 48 (2022). This is in stark contrast to the meager efforts made over a few days in *Krider* and *Melton*. *See Krider*, 258 N.C. App. at 115-16, 810 S.E.2d at 831 (holding no willfulness based on a single unsuccessful attempt at a home visit); *Melton*, 258 N.C. App. at 139, 811 S.E.2d at 682 (holding no willfulness based on two days of unsuccessful telephonic and in-person attempts). Finally, unlike both *Krider* and *Melton*, Ms. DeLeon offered no evidence explaining her near-total lack of contact with her probation officer. *See Mills*, 270 N.C. App. at 134, 840 S.E.2d at 295 (holding evidence that the defendant gave incorrect home address and telephone contact information and never contacted his probation officer was sufficient to support revocation for willfully absconding and defendant’s decision to tender no evidence failed to rebut the State’s presentation).

Ms. DeLeon contends that her single phone call a few days after her release on probation suffices to defeat any showing of willfulness based on our holding in *Williams*, arguing that the call made her location “generally known” to her probation

officers. But *Williams* is inapposite on its facts—there, the probation officer knew the defendant was frequently travelling to New Jersey and was able to successfully contact him via telephone numerous times. 243 N.C. App. at 198-99, 776 S.E.2d at 742. No such repeated successful contacts occurred here; while Ms. DeLeon did call the Wayne County probation office shortly after her probation began, a single instance of telephone contact—with no evidence as to what was communicated in that conversation—does not invariably outweigh other evidence of absconding when presented to the trial court. *See, e.g., Rucker*, 271 N.C. App. at 377, 843 S.E.2d at 715 (affirming an order revoking probation for willfully absconding despite numerous telephone contacts with the probation officer).

The probation officer’s total lack of knowledge of Ms. DeLeon’s whereabouts, as shown by the evidence, meaningfully distinguishes *Williams*. *See Trent*, 254 N.C. App. at 818, 803 S.E.2d at 230 (“The instant case is distinguishable from . . . *Williams* for the simple, but significant, fact that [the probation officer] was never aware of [the] defendant’s whereabouts after he left Randleman on 23 April 2016.”). So, too, does her failure to give accurate contact information at intake. *See id.* at 818-19, 803 S.E.2d at 231 (“[U]nlike in *Williams*, [the probation officer] had absolutely no means of contacting [the] defendant during his unauthorized trip to Raleigh.” (citation omitted)). On this record, Ms. DeLeon’s tender of incorrect contact and residence information during intake, alongside her failure to contact either probation office beyond a single instance for the ensuing four months—despite their officers’ diligent

efforts to locate her—is sufficient to support an inference that her conduct was willful and resulted in her “whereabouts [being] truly unknown to probation officers.” *Rucker*, 271 N.C. App. at 377, 843 S.E.2d at 715. *See also Mills*, 270 N.C. App. at 134, 840 S.E.2d at 295-96.

III. CONCLUSION

For the foregoing reasons, we hold that the trial court did not err in revoking Ms. DeLeon’s probation for willfully absconding and affirm the judgments of the trial court.

AFFIRMED.

Judges MURPHY and ARROWOOD concur.

Report per Rule 30(e).