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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-948

Filed 16 April 2024

Iredell County, Nos. 20 CRS 52885; 20 CRS 52617

STATE OF NORTH CAROLINA

v.

KIEYON MURDOCK

Appeal by defendant from judgments entered 1 March 2023 by Judge William Anderson Long, Jr. in Iredell County Superior Court. Heard in the Court of Appeals 19 March 2024.

*Attorney General Joshua H. Stein, by Assistant Attorney General Heather Haney, for the State.*

*Jason Christopher Yoder, for defendant-appellant.*

THOMPSON, Judge.

Defendant appeals from two judgments revoking his probation and activating his sentences for two counts of discharging a firearm into occupied property, and one count of possession of a firearm by a felon. On appeal, defendant contends that the trial court abused its discretion by revoking his probation. Defendant further contends that the trial court erred by making findings insufficient to support the

revocation of defendant's probation. After careful review, we affirm the trial court's judgments revoking defendant's probation, but remand the judgments for correction of the clerical errors mentioned in the discussion to come.

**I. Factual Background and Procedural History**

On 29 September 2021, Kieyon Murdock (defendant) was indicted by an Iredell County Grand Jury for two counts of possession of a firearm by a felon, one count of resisting a public officer, one count of discharging a weapon into an occupied dwelling, one count of discharging a weapon into an occupied vehicle, and three counts of assault with a deadly weapon. On 6 October 2021, defendant's attorney was served with notice of the State's intent to prove the existence of aggravating factors, specifically that the aforementioned offenses on which defendant was indicted were committed "while on pretrial release on another charge."

Between 6 January 2023 and 11 January 2023, defendant's probation officer filed six probation violation reports (reports) regarding defendant's convictions in Iredell County case numbers 20 CRS 52617<sup>1</sup> and 20 CRS 52885. These reports indicate that defendant violated the terms and conditions of his probation by: (1) testing positive for marijuana on 29 August 2022 and 6 December 2022; (2)

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<sup>1</sup> Defendant's case number 20 CRS 52617 contained two independent counts of discharging a firearm into occupied property wherein the trial court makes the distinction between the two counts by designating them as 20 CRS 52617-51 and 20 CRS 52617-52.

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committing the offense of assault on a female on 6 January 2023;<sup>2</sup> (3) committing the offense of habitual assault and assault by strangulation on 6 January 2023; (4) failing to comply with the conditions set forth in 20 CRS 52885; (5) failing to complete Cognitive Behavioral Intervention classes; (6) failing to pay any money toward his court indebtedness, leaving him \$955.50 in arrears; (7) failing to pay any money toward probation supervision fees, leaving him \$320.00 in arrears; (8) absconding from defendant's reported address on or about 10 January 2023; and (9) failing to report for an office visit scheduled for 10 January 2023, and not contacting the probation office.

On 12 January 2023, three arrest warrants were entered against defendant pursuant to the reports, and defendant was subsequently arrested on 1 February 2023.

On 1 March 2023, the Honorable William A. Long presided over defendant's probation violation hearing in Iredell County Superior Court. The State called defendant's probation officer (probation officer), Kevin Vance, to testify. The probation officer testified that defendant was sentenced to twelve to twenty-four months for the possession of a firearm by a felon charge, and to thirty-six to fifty-six months for the charge of discharging a weapon into occupied property. However, those sentences were suspended and the probation officer testified that defendant "was

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<sup>2</sup> At the time of the 1 March 2023 probation violation hearing, this charge was still pending. The case number for this charge is 23 CR 204066.

placed on probation on [2 December] of 2021 for possession of firearm by a felon” and for “discharging a firearm into occupied property.”<sup>3</sup> The probation officer’s testimony included his recounting of the alleged probation violations; however, defendant denied such allegations.

Despite there being a number of alleged probation violations, the trial court stated that “the big question [was] the absconding charge.” The probation officer testified that he went to defendant’s reported address twice, and defendant was not there either time.<sup>4</sup> When asked about the efforts that he made to locate defendant, the probation officer testified that he went to defendant’s reported address and “spoke with family members and they stated that [defendant] was not staying there.” Moreover, defendant’s grandmother told the probation officer that “she thought [defendant] was staying somewhere at Ridgecrest[,]” but she did not know the apartment number.

The probation officer further testified that after his unsuccessful attempts to locate defendant, he executed arrest warrants and a Fugitive Task Force out of Charlotte took over the case and ultimately located defendant. Moreover, the probation officer testified that he did not have any contact with defendant “between the time [probation officer] discovered that [defendant] was not at [defendant’s]

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<sup>3</sup> Defendant was ordered to serve thirty-six months of supervised probation for each offense.

<sup>4</sup> Testimony indicates that these attempts at locating defendant at his reported address occurred on the 8<sup>th</sup> and 10<sup>th</sup> of January, but there is no indication of the year.

residence and the time when the Fugitive Task Force took [defendant] into custody” which occurred on 1 February 2023. Additionally, the probation officer testified that a parole violation hearing occurred prior to the 1 March 2023 probation violation hearing, and during that parole violation hearing defendant’s parole was revoked because defendant “admitted that he absconded . . . .”<sup>5</sup>

Defendant testified that he had not moved and was still living at his reported address. Defendant further testified that, “[i]f [probation officer] would have checked [defendant’s] house he would have seen all [defendant’s] stuff was still there.” Regarding his contact with his probation officer, defendant testified that he “used to report every week” but approximately one to two weeks had elapsed since the last time he spoke with his probation officer.

The trial court held that, “[u]pon hearing and upon considering all of the information that was presented to [the court] for [defendant] and for the State . . . . [t]he [c]ourt will find that [defendant] did willfully violate the terms and conditions of his probation, in so far as he ha[d] absconded.” Furthermore, the trial court activated defendant’s two underlying sentences and ordered that they were to run consecutively, and “concurrent to his eight months.”

Defendant filed a timely written notice of appeal on 7 March 2023.

## **II. Analysis**

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<sup>5</sup> At the time of the 1 March 2023 probation violation hearing, defendant had to serve approximately eight more months on the sentence for which his parole was revoked.

**a. Standard of review**

This Court reviews a trial court's decision to revoke a defendant's probation for an abuse of discretion. *State v. Rucker*, 271 N.C. App. 370, 375, 843 S.E.2d 710, 714 (2020). A hearing to revoke a defendant's probation requires that the State present such evidence 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." *State v. Young*, 190 N.C. App. 458, 459, 660 S.E.2d 574, 576 (2008) (citation and internal quotation marks omitted). "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." *Id.* at 459, 660 S.E.2d at 576 (citation omitted).

**b. Sufficiency of findings of fact**

Defendant contends that, in relevant part, the trial court erred in finding that defendant's violation of N.C. Gen. Stat. § 15A-1343(b)(3a) was sufficient to revoke his probation. We disagree.

"The trial court has authority to alter or revoke a defendant's probation pursuant to N.C. Gen. Stat. § 15A-1344(a)." *State v. Johnson*, 246 N.C. App. 132, 136, 782 S.E.2d 549, 552 (2016). A trial court may only revoke and activate a defendant's suspended sentence if the defendant "(1) commits a new criminal offense in violation

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of N.C. Gen. Stat. § 15A-1343(b)(1); (2) absconds supervision in violation of N.C. Gen. Stat. § 15A-1343(b)(3a); or (3) violates a condition of probation after serving two prior periods of confinement in response to violations under N.C. Gen. Stat. § 15A-1344(d2).” *Id.* at 136, 782 S.E.2d 552–53 (citation omitted). “N.C. Gen. Stat. § 15A-1343(b)(3a) mandates, as a regular condition of probation, a defendant must ‘not abscond by willfully avoiding supervision or by willfully making his whereabouts unknown to the supervising probation officer, if the defendant is placed on supervised probation.’” *Id.* at 136, 782 S.E.2d at 553 (citation, internal brackets, and emphasis omitted).

“Probation violation hearings are generally informal, summary proceedings and the alleged probation violations need not be proven beyond a reasonable doubt.” *Id.* at 135, 782 S.E.2d at 552. “All that is required is that the evidence be such as to reasonably satisfy the judge in the exercise of his sound discretion that the defendant has violated a valid condition upon which the sentence was suspended.” *Id.* at 135–36, 782 S.E.2d at 552 (citation omitted). “The burden of proof rests upon the State to show a defendant willfully violated his probation conditions.” *Id.* at 135, 782 S.E.2d at 552.

In the present matter, the probation officer testified that he attempted a home visit at defendant’s last known address on 8 January, but defendant was not present. Defendant then missed a scheduled office visit with the probation officer on 10

January 2023 and failed to make any contact with the probation office about his absence. Based on defendant's failure to report for his 10 January 2023 office visit, the probation officer returned to defendant's address of record. Again, defendant was not present. While at defendant's reported address, the probation officer spoke with defendant's grandmother, who informed him that defendant was no longer staying there and that she believed defendant might be staying "somewhere at Ridgecrest" at an unknown apartment number. In addition to the probation officer's testimony, the defendant testified that he had not been in contact with his probation officer in approximately two weeks, despite having previously reported every week. The probation officer further testified that he did not have any contact with defendant until 1 February 2023 when defendant was taken into custody, approximately one month later.

For these reasons, we hold that the trial court properly revoked defendant's probation upon finding that defendant violated a term of his probation by absconding.

**c. Clerical error**

"A clerical error is an error resulting from a minor mistake or inadvertence, in writing or copying something on the record, and not from judicial reasoning or determination." *State v. Peele*, 246 N.C. App. 159, 167, 783 S.E.2d 28, 34 (2016) (citation and internal quotation marks omitted). "Clerical errors include mistakes such as inadvertently checking the wrong box on preprinted forms." *Id.* (citation

omitted). “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.” *Id.* (citation omitted).

Due process requires that a final probation revocation hearing, at a minimum, should include a written judgment by the trial court that contains (1) findings of fact regarding the evidence upon which the court relied, and (2) the court’s reasons for revoking probation. *Johnson*, 246 N.C. App. at 136, 782 S.E.2d at 552. However, this Court has held that, “[f]indings of fact noted by the trial court on pre-printed, standard forms are sufficient to comply with the statutory and due process requirements.” *Id.*

At the outset, we note that defendant’s argument that the court erred “by entering two contradictory judgments” is meritless. The record on appeal indicates that on 1 March 2023, the trial court entered judgments regarding the revocation of defendant’s probation in case numbers 20 CRS 52617-51, 20 CRS 52617-52, and 20 CRS 52885. However, these judgments were incomplete, and the trial court subsequently entered amended judgments that same day. The amended judgments for case numbers 20 CRS 52617-51 and 20 CRS 52885 are controlling on appeal.

Regarding clerical errors made by the trial court on the amended judgments, we first note that on the probation revocation judgments, the trial court committed clerical errors by marking box ‘2(b)’ under the ‘Findings’ section, indicating defendant waived a violation hearing and admitted to the alleged violations. Instead, the

appropriate box to mark was ‘2(a)’ because there *was* a probation violation hearing held on 1 March 2023, which defendant attended.

Next, we note that the trial court committed clerical error by including *all* paragraphs of the reports filed on 6 January 2023 and 9 January 2023 in the ‘Findings’ section ‘3(a)’ and ‘3(b),’ and *all* paragraphs of the reports filed on 9 January 2023 and 11 January 2023 in the ‘Findings’ section ‘3(a)’ and ‘3(b).’ However, the trial court’s holding explicitly stated that “[defendant] did willfully violate the terms and conditions of his probation, in so far as he ha[d] absconded[,]” and made no mention as to the other probation violations alleged in the reports. Thus, while it is totally appropriate to use the standard AOC-CR-607 pre-printed judgment form, it is incorrect for the trial court to make findings of fact that include the violations alleged in every paragraph of the 6 January and 9 January reports when the only paragraphs that are relevant to the trial court’s finding that defendant absconded are paragraphs one and two on the 11 January 2023 reports alleging that defendant absconded and that he failed to report to his probation officer.

Finally, we note that the trial court only entered two amended judgments—in case numbers 20 CRS 52617-51 and 20 CRS 52885—but the trial court should have also entered an amended judgment regarding case number 20 CRS 52617-52.

For these reasons, we remand this matter to the trial court for the correction of the aforementioned clerical errors.

### **III. Conclusion**

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After careful review of the record, we conclude that there was sufficient evidence before the trial court to support its decision to revoke defendant's probation; however, the judgments entered by the court did contain clerical errors. Because these errors do not affect the outcome of the case, we affirm the trial court's decision but remand for correction of the aforementioned clerical errors such that the record accurately reflects the holding of the trial court.

AFFIRM AND REMAND FOR CORRECTION.

Judges HAMPSON and GRIFFIN concur.

Report per Rule 30(e).