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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-1149

Filed 18 June 2024

Pitt County, No. 21 CRS 51335

STATE OF NORTH CAROLINA

v.

CHRISTY TILGHMAN, Defendant.

Appeal by Defendant from judgment entered 18 May 2023 by Judge Jeffery B. Foster in Pitt County Superior Court. Heard in the Court of Appeals 1 May 2024.

*Attorney General Joshua H. Stein, by Assistant Attorney General Jessica B. Helms, for the State.*

*Appellate Defender Glenn Gerding, by Assistant Appellate Defender, Brandon B. Mayes, for Defendant-Appellant.*

CARPENTER, Judge.

Christy Tilghman (“Defendant”) appeals from the trial court’s judgment revoking her probation and activating her suspended sentence. On appeal, Defendant argues that the trial court made a clerical error in the judgment. After careful review, we agree and remand for the trial court to correct the clerical error.

**I. Factual & Procedural Background**

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*Opinion of the Court*

On 11 April 2022, a Pitt County grand jury indicted Defendant for felony possession of fentanyl, felony possession of cocaine, and felony maintenance of a vehicle that was used for keeping and selling cocaine. On 2 August 2022, Defendant pleaded guilty to felony possession of cocaine, and the State dismissed the other charges. The trial court sentenced Defendant to a minimum term of five months and the corresponding maximum term of fifteen months imprisonment, suspended for twelve months of supervised probation.

On 13 September 2022, during a search of Defendant's Pennsylvania residence, Pennsylvania probation officers observed drug paraphernalia in plain sight. Altoona police officers arrested Defendant for misdemeanor possession of drug paraphernalia. On 30 January 2023, Defendant pleaded guilty to misdemeanor possession of drug paraphernalia in Pennsylvania.

On 24 February 2023, North Carolina probation officer Cook filed a probation violation report alleging five willful violations. These alleged violations included: (1) continuing to use illegal substances, noting Defendant tested positive for cocaine on five separate dates ("Violation 1"); (2) failing to make any payments to the Pitt County Clerk of Superior Court ("Violation 2"); (3) knowingly associating with any known or previously convicted users, possessors, or sellers of illegal substances ("Violation 3"); (4) committing a new criminal offense in any jurisdiction ("Violation 4"); and (5) failing to attend substance-abuse treatment programs as part of Defendant's treatment plan ("Violation 5").

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### *Opinion of the Court*

The trial court revoked Defendant's probation at the 18 May 2023 criminal session of Pitt County Superior Court. Counsel for Defendant admitted to the violations but asked the trial court to extend Defendant's probation for twelve months instead of revoking her probation. The trial court found Defendant had willfully violated the terms and conditions of her probation and revoked Defendant's probation "based on the . . . new conviction." The trial court activated Defendant's sentence and ordered Defendant to be imprisoned for a term of between five and fifteen months.

In its written judgment revoking probation ("Judgment Form"), the trial court checked box 3, indicating that Defendant willfully violated paragraphs one through five of the 21 February 2023 violation report. The trial court checked box 4, indicating that "[e]ach violation is, in and of itself, a sufficient basis upon which this [c]ourt should revoke probation and activate the suspended sentence." The trial court also checked box 5a, indicating "[t]he [c]ourt may revoke [D]efendant's probation for the willful violation of the condition(s) that [she] not commit any criminal offense . . . or abscond from supervision . . . as set out above." On 1 June 2023, Defendant filed written notice of appeal.

## **II. Jurisdiction**

This Court has jurisdiction under N.C. Gen Stat. §§ 7A-27(b)(1), 15A-1347(a) (2023).

## **III. Issue**

The issue on appeal is whether the trial court made a clerical error on the

Judgment Form which revoked Defendant's probation.

#### **IV. Analysis**

On appeal, Defendant asserts that Violation 4 was the only sufficient basis for revoking her probation, and that the trial court made a clerical error by checking box 4 on the Judgment Form indicating that all the alleged probation violations, individually, were sufficient grounds upon which to revoke Defendant's probation. After careful review, we agree with Defendant.

We review a trial court's decision to revoke probation for abuse of discretion. *State v. Murchison*, 367 N.C. 461, 464, 758 S.E.2d 356 (2014). Abuse of discretion occurs when the court's 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) (quoting *State v. Peterson*, 361 N.C. 587, 602-03, 652 S.E.2d 216, 227 (2007)).

A trial court may revoke a defendant's probation only if the defendant (1) commits a new criminal offense in any jurisdiction in violation of N.C. Gen. Stat. § 15A-1343(b)(1) (2023); (2) absconds supervised probation in violation of N.C. Gen. Stat. § 15A-1343(b)(3a) (2023); or (3) violates any condition after previously serving two periods of confinement in violation of N.C. Gen. Stat. § 15A-1344(d2) (2023). N.C. Gen. Stat. § 15A-1344(a) (2023); *State v. Jones*, 225 N.C. App. 181, 183, 736 S.E.2d 634, 636 (2013). "Once the State presents competent evidence establishing defendant's failure to comply with the terms of [her] probation, the burden is on

defendant to demonstrate through competent evidence [her] inability to comply with those terms.” *State v. Newsome*, 264 N.C. App. 659, 662, 828 S.E.2d 495, 498 (2019) (quoting *State v. Trent*, 254 N.C. App. 809, 819, 803 S.E.2d 224, 231 (2017)).

Here, the State presented evidence that Defendant pleaded guilty to misdemeanor possession of drug paraphernalia while she was living in Pennsylvania. In its determination, the trial court considered Defendant’s prior record and the violations of the valid conditions of probation to which she admitted. The trial court ultimately found that Defendant violated all five conditions of probation but revoked her probation based on her new conviction in Pennsylvania. In rendering its decision, the trial court stated: “So based on the . . . new conviction, the Court’s going to order that her probation be revoked. Her active sentence invoked and that she be sentenced to a term of five to fifteen months in the North Carolina Department of Corrections.”

While Violations 1, 2, 3, and 5 are valid conditions which Defendant admittedly violated, those violations do not constitute a new criminal offense, absconding, or a violation of any condition after previously serving two periods of confinement. *See* N.C. Gen. Stat. § 15A-1344(a). But because there was sufficient evidence for the trial court to conclude Defendant committed a new crime, thus violating a valid condition of probation, the trial court had a sufficient basis to revoke Defendant’s probation. *See Newsome*, 264 N.C. App. at 662, 828 S.E.2d at 498. As such, the trial court did not abuse its discretion in revoking Defendant’s probation.

Defendant concedes Violation 4 was a sufficient basis for the revocation of her

probation but argues the trial court made a clerical error in its written judgment revoking her probation. The State concedes and agrees with Defendant, and so do we. Accordingly, we remand for the trial court to correct the clerical error in Defendant's judgment.

We recognize that a court of record has the inherent power and duty to ensure its records speak the truth. *See State v. Cannon*, 244 N.C. 399, 403, 94 S.E.2d 339, 342 (1956). Thus, when a clerical error in the trial court's order is discovered on appeal, this Court may remand the case for correction of the clerical error. *State v. Smith*, 188 N.C. App. 842, 845, 656 S.E.2d 695, 696 (2008).

A clerical error is a minor mistake that does not alter the court's reasoning in ruling on an order. *In re A.R.B.*, 289 N.C. App. 119, 124, 888 S.E.2d 402, 406 (2023); *State v. Jarman*, 140 N.C. App. 198, 202, 535 S.E.2d 875, 878 (2000). As this Court has recognized, clerical errors are "typographical errors, mistakes in writing or copying something into the record," and inadvertent checking of boxes on forms. *In re J.K.P.*, 238 N.C. App. 334, 343, 767 S.E.2d 119, 124 (2014). Accordingly, "[w]hen the trial court incorrectly checks a box on a judgment form that contradicts its findings[,] and the mistake is supported by the evidence in the record, we may remand for correction of this clerical error in the judgment." *Newsome*, 264 N.C. App. at 665, 828 S.E.2d at 500 (affirming defendant's probation revocation because he willfully violated five conditions of probation, but remanding the case to correct a clerical error because the trial court erroneously checked a box on the judgment form); *see also*

*Jones*, 225 N.C. App. at 186, 736 S.E.2d at 638 (affirming defendant's probation revocation but remanding for correction of a clerical error on the judgment form).

Here, while the record supports the trial court's finding for revocation of Defendant's probation based upon a new criminal conviction, the record contains a clerical error. At Defendant's probation-revocation hearing, the trial court clearly stated Defendant's probation was revoked "based on the . . . new conviction." Consistent with the trial court's oral judgment at the hearing, box 5a was checked in the Findings Section on the Judgment Form, indicating the trial court was revoking Defendant's probation based on Defendant's new criminal offense. But the trial court also checked box 4, indicating that "[e]ach violation is, in and of itself, a sufficient basis upon which [the trial court] should revoke probation and activate the suspended sentence."

As discussed above, Violation 4 was the only violation that constituted a new criminal offense and thus, the only violation that was a sufficient basis for revoking probation. Violations 1, 2, 3, and 5, were not sufficient grounds to revoke probation under N.C. Gen. Stat. § 15A-1344(a). Consequently, it was a clerical error for the trial court to check box 4 in the Findings Section on the Judgment Form. Accordingly, we remand the case to the trial court to correct this clerical error on the Judgment Form.

## **V. Conclusion**

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*Opinion of the Court*

We hold that the trial court did not abuse its discretion in revoking Defendant's probation; however, we remand for the limited purpose of correcting the clerical error described above.

AFFIRMED AND REMANDED FOR CORRECTION OF CLERICAL ERROR.

Judges TYSON and ARROWOOD concur.

Report per Rule 30(e).