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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA 23-970

Filed 16 July 2024

Yadkin County, Nos. 22 CRS 050371; 22 CRS 102

STATE OF NORTH CAROLINA,

v.

JASON ALEXANDER WINTERS, Defendant.

Appeal by defendant from judgment entered 4 April 2023 by Judge R. Stuart Albright in Yadkin County Superior Court. Heard in the Court of Appeals 29 May 2024.

*Attorney General Joshua H. Stein, by Special Deputy Attorney General Mary W. Scruggs for the State.*

*Jason Christopher Yoder for Defendant-Appellant.*

PER CURIAM.

This appeal concerns two different criminal proceedings involving Defendant Jason Alexander Winters.

On 31 March 2022, in 22 CRS 102, Defendant pleaded guilty to several crimes, including one count of taking indecent liberties with a minor. The trial court entered

a judgment which included an active sentence which was suspended for 30 months of supervised probation. Also, Defendant was ordered to register as a sex offender.

In April and May 2022, in that same matter, the State filed violation reports, alleging that Defendant had absconded; that he changed his address without permission; and that he committed a new offense. That new offense consisted of Defendant failing to register as a sex offender, and a new criminal proceeding (22 CRS 550371) was commenced concerning that new offense.

In March 2023, in 22 CRS 550371 Defendant was convicted by a jury for failing to register as a sex offender. The jury found an aggravating factor to exist and sentenced Defendant accordingly to an active term of imprisonment. And in 22 CRS 102, the trial court activated his sentence based on the violation reports filed the previous year. Defendant appealed from both judgments.<sup>1</sup>

## I. Argument

Defendant makes essentially two arguments, which we address in turn.

Defendant's first argument concerns the aggravated sentence he received in 22 CRS 550371. Here, the State sought an aggravating sentence based on the statutory aggravating factor that:

[t]he defendant has, during the 10-year period prior to the commission of the offense for which the defendant is being sentenced, been found by a court of this State to be

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<sup>1</sup> To the extent Defendant has not properly appealed, we grant his petition for writ of certiorari in the aid of our appellate jurisdiction.

in willful violation of the conditions of probation imposed pursuant to a suspended sentence. . . .

N.C. Gen. Stat. § 15A-1340.16(d)(12a) (2023). In support of this factor, the State offered certified copies of a 2014 judgment and probation violation report. The report showed that Defendant had been placed on probation for other crimes, that Defendant had violated a condition of probation, that his violation(s) were “willful and without valid excuse,” and that he served a short sentence based on this violation.

Defendant argues that the trial court should have dismissed his 2014 violation as an aggravating factor because the State failed to put on evidence as to which condition of probation he was found to have violated in 2014.

However, under G.S. 15A-1340.16(d)(12a), there is no requirement that the jury determine which condition of probation the defendant violated. Rather, all that is required under the statute is for a jury to determine whether *a court of this State has found* the defendant to have been in willful violation of a condition of probation.

We conclude that there was sufficient evidence to submit the aggravating factor to the jury for its consideration.

Further, we disagree with Defendant’s contention that the trial court abused its discretion by giving more weight to the aggravating factor found by the jury than two mitigating factors which were present. Indeed, our Supreme Court does not require the sentencing court to justify the weight it attaches to any factor and “may very properly emphasize one factor more than another in a particular case.” *State v. Melton*, 307 N.C. 370, 380, 298 S.E.2d 673, 680 (1983). We have reviewed the

judgment and cannot say that it is “manifestly unsupported by reason.” *State v. Butler*, 341 N.C. 686, 694, 462 S.E.2d 485, 489 (1995).

In his last argument, Defendant contends that the trial court erred in 22 CRS 102 by determining that each of Defendant’s three violations was, in and of itself, a sufficient basis to revoke probation and activate his sentence.

Here, the trial court determined that Defendant violated three conditions of probation, one of which involved his changing of his address without permission from his supervising officer. However, a violation of that condition is a technical violation and cannot form the basis separately for revoking a defendant’s probation.

It appears from the transcript of the hearing that the trial court was revoking Defendant’s probation based on the *other* violations, that he had absconded and that he had committed a new crime. However, in the written order, the sentencing judge checked the box indicating that any of the three violations justified revocation. *See, e.g., State v. Hemingway*, 278 N.C. App. 538, 544, 863 S.E.2d 279, 283 (2021) (noting that “the written order controls for purposes of appeal.”).

It appears that the trial court’s error by indicating any of the three violations was sufficient to revoke Defendant’s probation was clerical in nature. We remand the matter to the trial court to correct its error.

AFFIRMED IN PART, REMANDED IN PART.

Panel consisting of Chief Judge DILLON and Judges ARROWOOD and HAMPSON.

STATE V. WINTERS

*Opinion of the Court*

Report per Rule 30(e).