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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-847

Filed 6 August 2024

Lee County, No. 20-CRS-051340

STATE OF NORTH CAROLINA

v.

TIFFANY TONI REY, Defendant.

Appeal by Defendant from judgment entered 29 November 2022 by Judge C. Winston Gilchrist in Lee County Superior Court. Heard in the Court of Appeals 5 March 2024.

Attorney General Joshua H. Stein, by Special Deputy Attorney General, Asa C. Edwards, IV, for the State.

Attorney Stephen D. Fuller for the defendant-appellant.

STADING, Judge.

Defendant Tiffany Toni Rey appeals from a judgment revoking her probation entered upon the trial court finding that Defendant willfully absconded from supervision in violation of N.C. Gen. Stat. § 15A-1343(b)(3a) (2023). For the reasons below, we affirm.

I. Background

On 16 November 2020, Defendant was indicted for embezzlement. While facing embezzlement charges, Defendant was convicted for contributing to the delinquency of a minor on 19 January 2022 and sentenced to sixty days in jail. On 25 August 2022, Defendant pleaded guilty to embezzlement and agreed to a sentence of four to fourteen months of imprisonment, suspended for eighteen months of supervised probation. Before pleading guilty, Defendant affirmed under oath that (1) the pending charge had been explained to her by her lawyer, (2) she entered the plea agreement of her “own free will,” (3) she “fully [understood] what [she was] doing,” (4) she did not “have any questions about [the plea arrangement] or about anything else connected to [her] case,” and (5) she was satisfied with her lawyer’s legal services.

Defendant’s supervised probation was subject to the regular conditions of probation per N.C. Gen. Stat. § 15A-1343(b1) (2023). The stipulated conditions were explicitly enumerated in the judgment and meticulously reviewed with her by the Judicial Services Coordinator on 25 August 2022. The regular conditions of Defendant’s probation included the obligations to “report as directed ... to the officer,” “obtain prior approval from the officer for, and notify the officer of, any change in address,” and “not abscond, by willfully avoiding supervision or by willfully making [her] whereabouts unknown to the supervising probation officer.”

On 26 August 2022, Defendant’s probation officer spoke with Defendant on the phone and they scheduled a meeting to take place on 30 August 2022. On 29 August

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2022, Defendant called the probation officer and cancelled the meeting. They “tried to set something up in the future,” and then the probation officer lost all contact with Defendant. It was not until after the violation report had been filed on 5 October 2022, that Defendant contacted the probation officer, breaking a silence that had left her location undisclosed.

On 6 September 2022, the probation officer tried to reach Defendant using the telephone number provided at probation intake process. There was neither an answer nor a returned call. The next day, seeking to reestablish contact, the probation officer visited the address provided by Defendant, only to find her absent. Then, on 15 September 2022, upon returning to Defendant’s last known address, the probation officer interacted with a resident who disclosed that Defendant had not resided at that location for months. That same day, the probation officer attempted to reach out to Defendant again via phone call and text message to schedule an office appointment. Nonetheless, Defendant did not acknowledge these communications.

On 20 September 2022, the probation officer filed a violation report due to Defendant’s failure to “[r]eport as directed . . . to the officer at reasonable times and places” and “permit the officer to visit at reasonable times. . . .” That same day, the trial court, in turn, issued an order for Defendant’s arrest.

The probation officer then made several futile attempts to reach Defendant at her last reported address on 21, 27 September 2022 and 4 October 2022. Unknown to the probation officer, Defendant had taken refuge in a shelter in Harnett County

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since 27 September 2022. This led to the filing of an addendum to the probation violation report on 5 October 2022, citing willful absconding as Defendant had ceased all communication and had not disclosed her whereabouts since canceling her initial appointment on 29 August 2022.

On 11 October 2022 Defendant made contact via telephone yet refused to provide a verifiable address. Despite being instructed to report in person the next day, Defendant failed to comply. It was not until 14 October 2022 that Defendant called to provide an address. However, upon arrival, the probation officer was denied access. The ordeal concluded on 17 October 2022, when Defendant finally reported to the probation office and was detained.

On 29 November 2022, the trial court conducted a probation revocation hearing. Ultimately, the trial court determined that Defendant had willfully absconded, thereby violating N.C. Gen. Stat. § 15A-1343(b)(3a). Defendant entered notice of appeal in open court.

II. Analysis

The sole issue is whether the trial court erred when it found sufficient evidence that Defendant willfully absconded supervision. “This Court reviews the trial court’s decision to revoke a defendant’s probation for abuse of discretion. The State must produce sufficient evidence to reasonably satisfy the trial court in the exercise of its sound discretion that the defendant willfully violated a valid condition upon which probation can be revoked. An abuse of discretion occurs when a ruling is manifestly

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unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision.” *State v. Crompton*, 270 N.C. App. 439, 442, 842 S.E.2d 106, 109 (2020) (citation and quotation marks omitted); *State v. Maness*, 363 N.C. 261, 279, 677 S.E.2d 796, 808 (2009) (citation and quotation marks omitted) (noting that an 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.”).

“Probation or suspension of sentence comes as an act of grace to one convicted of, or pleading guilty to, a crime.” *State v. Murchison*, 367 N.C. 461, 463, 758 S.E.2d 356, 358 (2014) (citation and quotation marks omitted). “A probation revocation proceeding is not a formal criminal prosecution,” and an “alleged violation of a valid condition of probation need not be proven beyond a reasonable doubt.” *Id.* at 464, 758 S.E.2d at 358 (citations and quotation marks omitted).

N.C. Gen. Stat. § 15A-1343 establishes the conditions of probation and states:

(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.

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(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) (2023). Thus, under the plain language of § 15A-1343(b)(3a), a defendant “absconds” by either (1) “willfully avoiding supervision” or (2) “willfully making the defendant’s whereabouts unknown to the supervising probation officer.” N.C. Gen. Stat. § 15A-1343(b)(3a). “When used in criminal statutes, ‘willful’ has been defined as ‘the wrongful doing of an act without justification or excuse, or the commission of an act purposely and deliberately in violation of the law.’” *State v. Bradsher*, 255 N.C. App. 625, 633, 805 S.E.2d 191, 196 (2017) (quoting *State v. Brackett*, 306 N.C. 138, 142, 291 S.E.2d 660, 662 (1982)). Proving “willfulness” is seldom done “by direct evidence and must usually be shown through circumstantial evidence.” *State v. Walston*, 140 N.C. App. 327, 332, 536 S.E.2d 630, 633 (2000).

Here, the probation officer’s violation report specifically alleged, and the State presented competent evidence to support the trial court’s finding that Defendant violated the conditions of her probation by absconding. At the revocation hearing, the probation officer testified that Defendant had failed to report as directed, failed to return the probation officer’s phone calls, and failed to provide the officer with a verifiable address. *See State v. Melton*, 258 N.C. App. 134, 138, 811 S.E.2d 678, 681 (2018) (“[A] defendant absconds when he willfully makes his whereabouts unknown to his probation officer, and the probation officer is unable to contact the defendant.”).

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The evidence illustrated, for instance, that Defendant engaged in several actions indicative of an intent to evade probationary supervision. Defendant first provided inaccurate contact details during the intake process. *See State v. Moody*, 266 N.C. App. 403, 829 S.E.2d 699 (2019) (affirming trial court’s ruling that defendant absconded when the defendant, in part, “provided his probation officers with a false address.”). She later cancelled her first scheduled meeting with the probation officer. Further complicating matters, Defendant relocated to several undisclosed residences without informing her probation officer. *See Crompton*, 270 N.C. App. at 448, 842 S.E.2d at 113 (affirming trial court’s finding that defendant absconded when the probation officer “was completely unaware of Defendant's whereabouts and exhausted all available avenues of contacting Defendant over the course of ten days.”). Defendant then effectively obscured her whereabouts by neglecting to contact her probation officer or update her contact information from 29 August 2022, until after the probation violation report was filed on 5 October 2022. *See State v. Trent*, 254 N.C. App. 809, 803 S.E.2d 224 (2017) (finding there was sufficient evidence that the defendant had willfully absconded, and thereby, made his whereabouts unknown, as the probation officer had “absolutely no means” of contacting the defendant; the defendant did not wear a monitoring device; the defendant was not present during two unannounced visits at the reported address; and the defendant knew the probation officer had visited the residence while he was away but did not contact the officer when he returned).

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The trial court's conclusion that Defendant willfully absconded was substantiated by a breadth of competent evidence. Defendant's actions in this case bear a striking resemblance to those of the defendant in *Crompton*. 270 N.C. App. at 441-42, 842 S.E.2d at 109 (holding that the evidence was sufficient to prove absconding where "[d]uring this investigation, the officer went to Defendant's last known residence twice, called all of Defendant's references and contact numbers, called the local hospital, checked legal databases to see whether Defendant was in custody, and called the vocational program Defendant was supposed to attend. . . . Defendant also failed to report for scheduled appointments . . . without contacting the probation officer"). We therefore hold that the trial court did not err when it found sufficient evidence that Defendant absconded supervision.

III. Conclusion

Based on the above, we affirm the trial court's revocation of Defendant's probation.

AFFIRM.

Judges HAMPSON and GRIFFIN concur.

Report per Rule 30(e).