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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-485

Filed 15 October 2024

Surry County, Nos. 17CRS51177, 18CRS50489, 18CRS50827

STATE OF NORTH CAROLINA

v.

CHRISTOPHER KYLE WILSON, Defendant.

Appeal by defendant from judgments entered 3 October 2022 by Judge Angela B. Puckett in Superior Court, Surry County. Heard in the Court of Appeals 6 March 2024.

Attorney General Joshua H. Stein, by Assistant Attorney General Aymie B. Feeney, for the State.

Cooper Strickland for defendant-appellant.

STROUD, Judge.

Defendant appeals from judgments revoking his probation after he was found in possession of drugs and a firearm during a search of his home. We conclude the trial court did not abuse its discretion in finding Defendant willfully committed a criminal offense while on probation and thus revoking his probation, but we must remand the case for correction of clerical errors in the judgments.

I. Background

Defendant entered a guilty plea to several drug charges and a possession of a firearm by felon charge on 16 February 2021. Defendant was sentenced to a term of imprisonment for the firearm charge and his sentence for the drug charges was suspended for a term of 24 months supervised probation. Defendant’s probation officer filed a violation report on 12 January 2022 alleging Defendant willfully violated several conditions of his probation by committing criminal offenses of (1) being in possession of a firearm by a felon; and (2) possessing “a large quantity of white crystal-like substance deemed methamphetamine, a large quantity of green-leafy substance that appeared to be marijuana, several oxycodone pills, [and] a . . . small amount of white powder substance deemed fentanyl[.]”

The matter came on for hearing on 3 October 2022. The State’s evidence tended to show that Surry County Sheriff’s Detective Wayne Banks executed a search warrant on Defendant’s home on 11 January 2022. Detective Banks testified that on 4 January 2022, detectives sent a confidential informant (“CI”) to Defendant’s home and the CI bought methamphetamine and marijuana from Defendant. The sale was “audio and video recorded” and Detective Banks identified Defendant weighing out the drugs. The methamphetamine was field-tested and indicated a positive test. Detective Banks had a separate CI go to Defendant’s home on 10 January 2022 and the CI bought methamphetamine and fentanyl. This interaction was also audio and video recorded and the drugs field-tested positive. Detectives applied for and were

granted a search warrant of the home; law enforcement executed the search warrant on 11 January 2022. Detective Banks testified upon execution of the search warrant, law enforcement found a “Colt handgun that the serial number had been removed[,]” methamphetamine, oxycodone, fentanyl, and marijuana. Defendant also had scales and currency in the amounts of \$218.00 and \$2,560.00. Detectives also located \$80.00 in “buy money” which Detective Banks testified was the money that one of the CI’s used to buy drugs from Defendant earlier in the week. Detective Banks confirmed Defendant was a convicted felon at the time of the search.

Defendant testified at the hearing that the drugs were not his and other people lived in the home. Defendant stated there “is a notarized affidavit” from Cory Coleman indicating the gun and drugs were his; however, Defendant did not produce an affidavit at the hearing. Defendant testified he had no knowledge the gun or drugs were in his home and that he was not aware of the CI who bought drugs from Defendant under the supervision of Detective Banks.

The trial court found Defendant “did violate the conditions of his probation” by committing new criminal offenses of possessing a firearm by felon, possessing drug paraphernalia, and possessing methamphetamine, oxycodone, fentanyl, and marijuana. Judgments were entered 3 October 2022 revoking Defendant’s probation and committing him to an active sentence. Defendant filed written notice of appeal on 11 October 2022.

II. Probation Violation

On appeal, Defendant argues “[t]he trial court abused its discretion in revoking [Defendant’s] probation where there was insufficient evidence that he willfully committed a criminal offense while on probation” and “[t]he case should be remanded to correct clerical errors in the judgment upon revocation of probation.”

A. Sufficiency of the Evidence

Defendant argues “there was insufficient evidence of possession” and “[t]here was insufficient evidence that the items were controlled substances.”

Probation violation hearings are generally informal, summary proceedings and the alleged probation violations need not be proven beyond a reasonable doubt. The burden of proof rests upon the State to show a defendant willfully violated his probation conditions.

The State must present substantial evidence of each probation violation. 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.

State v. Johnson, 246 N.C. App. 132, 135-36, 782 S.E.2d 549, 552 (2016) (citations and quotation marks omitted). North Carolina General Statute Section 15A-1343(b) states “[r]egular conditions of probation apply to each defendant placed on supervised probation unless the presiding judge specifically exempts the defendant from one or more of the conditions[.]” N.C. Gen. Stat. § 15A-1343(b) (2023). One regular condition of probation provides a defendant must “[c]ommit no criminal offense in any jurisdiction.” N.C. Gen. Stat. § 15A-1343(b)(1). North Carolina General Statute Section 15A-1344(a) allows a judge to revoke a defendant’s probation “for a violation

of a condition of probation under G.S. 15A-1343(b)(1)[.]” N.C. Gen. Stat. § 15A-1344(a) (2023).

1. Sufficient Evidence of Possession

Defendant contends the State presented insufficient evidence to conclude he was in constructive possession of the drugs and gun since Defendant did not have exclusive possession of the home. This argument is without merit.

A defendant constructively possesses contraband when he or she has the intent and capability to maintain control and dominion over it. The defendant may have the power to control either alone or jointly with others. Unless a defendant has exclusive possession of the place where the contraband is found, the State must show other incriminating circumstances sufficient for the jury to find a defendant had constructive possession.

State v. Miller, 363 N.C. 96, 99, 678 S.E.2d 592, 594 (2009) (citations and quotation marks omitted). Constructive possession cases “have tended to turn on the specific facts presented.” *Id.*

In determining whether sufficient incriminating circumstances exist to support a finding of constructive possession, a review of this Court’s cases reveals that we have considered the following factors: (1) the defendant’s ownership and occupation of the property (as previously discussed); (2) the defendant’s proximity to the contraband; (3) indicia of the defendant’s control over the place where the contraband is found; (4) the defendant’s suspicious behavior at or near the time of the contraband’s discovery; and (5) other evidence found in the defendant’s possession that links the defendant to the contraband.

State v. Chekanow, 370 N.C. 488, 496, 809 S.E.2d 546, 552 (2018) (citation omitted).

Defendant contends there was insufficient evidence he had exclusive possession of the home as Detective Banks was asked “[d]o you know who all resided at [Defendant’s] residence” to which Detective Banks replied, “[t]he only person we know of was [Defendant].” Defendant does not dispute he “resided [in] and was present at the location where the substances and firearm were located.” Defendant further does not dispute having possession of a firearm and possession of the drugs would be a criminal offense sufficient to revoke Defendant’s probation. But even assuming Defendant did not have exclusive possession of the home, which the evidence would support, there is sufficient evidence to conclude he was in constructive possession of the gun and drugs.

Defendant overlooks the evidence from the initial investigation which led to the execution of the search warrants on 11 January 2022. Detective Banks testified that on two occasions a CI went into Defendant’s home and purchased drugs. Detective Banks testified these interactions were audio and video recorded and he personally observed Defendant weighing out the drugs to sell to the CI. These drugs were field-tested by Detective Banks and indicated a positive test. Detective Banks saw Defendant selling drugs in the home twice just days before the execution of the search warrant and Detective Banks testified that Defendant lived at the home; this is sufficient evidence Defendant “had control over the place where the contraband [was] found[.]” *Id.* Detective Banks did not state there was any other person besides Defendant in the house during the two days Defendant sold drugs to the CIs before

execution of the warrant. Further, Defendant was on the porch of the home when the search warrant was executed, and the gun and drugs were found in the laundry room, showing he was in close “proximity to the contraband.” *Id.* Thus, the State presented sufficient evidence, even assuming Defendant did not have exclusive possession of the home, that Defendant was in constructive possession of the gun and drugs.

2. Identification of Controlled Substances

Defendant next argues “[t]here was insufficient evidence that the items were controlled substances.” Defendant does not at all address the gun in this section of his brief. Even assuming there was insufficient evidence that the drugs found at the home were not controlled substances – and we do not so conclude – the possession of the firearm by Defendant would still be sufficient evidence to revoke Defendant’s probation. Thus, we will not address this argument any further. *See State v. Bradley*, 282 N.C. App. 292, 300, 870 S.E.2d 297, 303 (2022) (“The trial court is not required under the language of N.C. Gen. Stat. § 15A-1344(a) and N.C. Gen. Stat. § 15A-1343(b)(1) to find more than one new criminal offense exists in order to revoke a defendant’s probation.”), *aff’d as modified State v. Bradley*, 384 N.C. 652, 887 S.E.2d 698 (2023).

B. Clerical Errors

Finally, Defendant argues “[t]he case should be remanded to correct clerical errors in the judgment upon revocation of probation.” Specifically, Defendant states

[i]n its judgments, the trial court found that “[e]ach

violation is, in itself, a sufficient basis” to revoke [Defendant’s] probation, even though none of the violations except those for new criminal offenses could have provided a potential basis for revocation under the statute.

“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.” *State v. Newsome*, 264 N.C. App. 659, 665, 828 S.E.2d 495, 500 (2019) (citation and quotation marks omitted). Further,

a trial court may only revoke probation for committing a criminal offense or absconding. N.C. Gen. Stat. § 15A-1344(a). Thus, the judgment form must clearly indicate that probation was revoked because Defendant had committed a criminal offense or absconded. When 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.

Id. (citation, quotation marks, and brackets omitted).

While the trial court did check the correct box that Defendant’s probation was revoked “for the willful violation of the condition(s) that he/she not commit any criminal offense, G.S. 15A-1343(b)(1), . . . as set out above,” the box 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” was also checked. The violation report alleged other violations such as failing to submit to a substance abuse assessment and recommended treatment. As *Newsome* notes, those violations alone would not be sufficient to revoke Defendants probation. *See id.* Still, the trial court

checked the box that each violation was sufficient to revoke probation so we must “remand to the trial court to correct this clerical error on the judgment.” *Id.* at 666, 828 S.E.2d at 500.

III. Conclusion

As there was sufficient evidence presented that Defendant committed new criminal offenses while on probation, the trial court did not abuse its discretion in revoking Defendant’s probation. Since the trial court checked an incorrect box on the judgment stating each violation was a sufficient basis to revoke Defendant’s probation, we must remand for the trial court to correct the clerical error.

AFFIRMED IN PART; REMANDED IN PART.

Judges CARPENTER and FLOOD concur.

Report per Rule 30(e).