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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-208

Filed 19 November 2024

New Hanover County, Nos. 17 CRS 59176, 17 CRS 59217, 17 CRS 59223

STATE OF NORTH CAROLINA

v.

RANDAL SCOTT JORDAN, Jr., Defendant.

Appeal by Defendant from judgments entered 9 December 2022 by Judge James H. Faison III in New Hanover County District Court. Heard in the Court of Appeals 11 September 2024.

Attorney General Joshua H. Stein, by Assistant Attorney General Miranda Holley, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender John F. Carella, for defendant-appellant.

CARPENTER, Judge.

Randal Scott Jordan, Jr. (“Defendant”) appeals from the trial court’s judgment revoking his probation and activating his suspended sentence. On appeal, Defendant argues the trial court abused its discretion when it revoked his probation. After careful review, we affirm.

I. Factual & Procedural Background

On 20 August 2018, a New Hanover County grand jury indicted Defendant for multiple counts of breaking and entering, felony larceny, and injury to real property. On 29 October 2018, pursuant to a plea agreement with the State, Defendant pleaded guilty to thirty-nine separate charges involving breaking and entering, felony larceny, and injury to real property. In exchange for his guilty plea, the State agreed to dismiss other charges related to felony possession of cocaine, felony possession of a Schedule I controlled substance, and possession of drug paraphernalia. The trial court sentenced Defendant to an active sentence of fifteen to twenty-seven months, followed by three consecutive suspended sentences of fifteen to twenty-seven months. The trial court also ordered Defendant to pay restitution and enroll in and successfully complete Drug Court¹ as part of supervised probation.

On 2 November 2018, Defendant entered into a Community Recovery Court Agreement (“Drug Court Agreement”) with the New Hanover County Recovery Court Program. Defendant certified in the agreement that he “[would] attend the recommended treatment” and “submit to the additional treatment, appointments, or testing as ordered by the Court[.]”

On 28 May 2021, Defendant was brought before the trial court for a probation violation hearing. The trial court determined that Defendant willfully violated the

¹ Drug Court refers to a “judicially managed accountability and recovery program[.]” See N.C. Gen. Stat. § 15A-1343(b1)(2b) (2023).

terms of his probation and sentenced him to ninety days of confinement.

On 19 September 2021, with the consent of Defendant and the State, the trial court extended Defendant's probation for an additional twenty-four months. On 23 November 2021, with the consent of Defendant and the State, the trial court ordered Defendant to complete a twenty-eight-day program at the Charles George Veterans Affairs ("VA") Medical Center.

On 5 August 2022, Defendant was again brought before the trial court for a probation violation hearing. The trial court determined that Defendant willfully violated the terms of his probation and sentenced him to another ninety days of confinement. The trial court also imposed a special condition of probation that required Defendant "to enroll in and continue with treatment through the VA and comply with any/all recommendations they may have." During Defendant's confinement for his second probation violation, the VA recommended that he enroll in and complete the First at Blueridge ("Blueridge") drug treatment program. While Defendant was serving his sentence, Probation Officer Charles Brownley and Drug Court Coordinator, Denise Smith, worked with Defendant's case manager to provide Defendant with the information needed to complete the application for enrollment in Blueridge. "[T]he hope was, upon his release, he would be able to go into that program." Despite this support, Defendant never completed an application or enrolled in the program.

On 2 November 2022, Officer Brownley filed a probation violation report

alleging Defendant willfully violated the conditions of his probation. In his report, Officer Brownley alleged that Defendant willfully violated the terms of his probation by failing to comply with the terms of the Drug Court Agreement. More specifically, Officer Brownley alleged that Defendant did not comply with the terms of the trial court's 5 August 2022 order, because Defendant failed to follow the VA's recommendation to pursue treatment at the Blueridge program.

A probation violation hearing was held on 9 December 2022. At the hearing, Officer Brownley testified that Defendant refused to enroll in or attend the Blueridge program despite Officer Brownley's multiple attempts to facilitate completion of the necessary paperwork. Defendant admitted to his noncompliance but maintained that Blueridge did not provide the substance abuse treatment he required.

In its written judgment revoking probation ("Judgment Form"), the trial court checked box 3a, finding that Defendant violated his probation conditions as alleged in Officer Brownley's violation report. The trial court also checked box 5b of the Judgment Form, finding Defendant was twice previously confined in response to probation violations. The trial court entered judgment and commitment revoking Defendant's probation and activating his suspended sentence. Defendant gave oral notice of appeal in open court.

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 abused its discretion in revoking Defendant's probation.

IV. Analysis

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, 358 (2014). Abuse of discretion occurs when the trial 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 261, 277 (2007)).

A trial court may only revoke probation and activate a defendant's suspended sentence if the defendant: (1) commits a new criminal offense in violation 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). N.C. Gen. Stat. § 15A-1344(a) (2023); *State v. Jones*, 225 N.C. App. 181, 183, 736 S.E.2d 634, 636 (2013). "[O]nce the State present[s] competent evidence establishing defendant's failure to comply with the terms of his probation, the burden [is] on *defendant* to demonstrate through competent evidence his 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, record evidence, including allegations contained within the verified probation violation reports and testimony at Defendant's revocation hearing, was competent evidence for the trial court to find and conclude Defendant had willfully violated a valid term of his probation, and to activate his suspended sentence under section 15A-1344(d2). *See Newsome*, 264 N.C. App. at 662, 828 S.E.2d at 498.

Pursuant to the 29 October 2018 plea agreement, the trial court ordered Defendant to "enroll in and successfully complete Drug Court as part of supervised probation[.]" Among the terms of the Drug Court Agreement were requirements to "attend the recommended treatment" and "submit to the additional treatment" as recommended by the court or coordinator. At the 9 December 2022 probation violation hearing, the State presented evidence that, on 5 August 2022, the trial court ordered Defendant "to enroll in and continue with treatment through the VA and comply with any/all recommendations they may have." Subsequently, while Defendant was confined for his second probation violation, the VA recommended Defendant enroll in and attend the Blueridge treatment program. Officer Brownley, the Drug Court Coordinator, Denise Smith, and Defendant's case manager attempted to assist Defendant with the Blueridge enrollment process, but Defendant refused to participate. Defendant further admitted that he failed to comply with the VA's recommendation. Although Defendant voiced his dissatisfaction with the VA's Blueridge treatment recommendation and insisted on his personal preference for other programs, Defendant failed to demonstrate his inability to comply with this

probation requirement. *See Newsome*, 264 N.C. App. at 662, 828 S.E.2d at 498; *see also State v. Bryant*, 73 N.C. App. 647, 648, 326 S.E.2d 910, 911 (1985) (“[I]f a defendant fails to offer evidence of his inability to comply with the probationary terms, evidence establishing his non-compliance is sufficient to justify a finding that the failure was [willful] or without lawful excuse.”).

Because there was competent evidence that Defendant willfully violated a valid condition of his probation following two previous confinements, the trial court did not abuse its discretion by revoking Defendant’s probation under section 15A-1344(d2). *See Jones*, 225 N.C. App. at 183, 736 S.E.2d at 636.

Defendant next argues that the probation term was invalid because completion of the Blueridge program extended beyond the maximum duration of his probationary term. We need not, however, address this argument on appeal. Under section 15A-1343(b1), a trial court “may, as a condition of probation, require that *during* the probation the defendant comply” with special conditions of probation. N.C. Gen. Stat. § 15A-1343(b1) (2023) (emphasis added). This includes requiring a defendant to “attend or reside in a facility providing rehabilitation,” or “participate in and successfully complete a local judicially managed accountability and recovery court program[.]” N.C. Gen. Stat. § 15A-1343(b1)(2)–(2b).

Contrary to Defendant’s assertions, the trial court did not mandate compliance with the Blueridge program after the expiration of his probation. Rather, the trial court mandated compliance with a special condition of probation *during* Defendant’s

probationary term. *See* N.C. Gen. Stat. § 15A-1343(b1).

Here, the trial court ordered Defendant to enroll in and successfully complete Drug Court, as permitted under section 15A-1343(b1)(2b). Among the terms of the Drug Court Agreement, Defendant agreed to “attend the recommended treatment” and “submit to the additional treatment, appointments, or testing as ordered by the Court[.]” On 5 August 2022, the trial court ordered Defendant to comply with all treatment recommendations provided by the VA.

By failing to comply with the VA’s recommendation to pursue treatment through the Blueridge program, Defendant violated his Drug Court Agreement and, in turn, a special condition of his probation. *See* N.C. Gen. Stat. § 15A-1343(b1)(2)–(2b). Thus, the evidence was sufficient for the trial court, in the exercise of its sound discretion, to conclude that Defendant willfully violated a valid condition of his probation. *See Newsome*, 264 N.C. App. at 662, 828 S.E.2d at 498.

V. Conclusion

We hold that the trial court did not abuse its discretion in revoking Defendant’s probation.

AFFIRMED.

Judges FLOOD and STADING concur.

Report per Rule 30(e).