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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-634

Filed 19 November 2024

Caldwell County, Nos. 21 CRS 52679, 22 CRS 272

STATE OF NORTH CAROLINA

v.

ALLEN JEBRIAUN AUDREY, Defendant.

Appeal by Defendant from judgment entered 5 March 2024 by Judge William T. Stetzer in Caldwell County Superior Court. Heard in the Court of Appeals 22 October 2024.

*Attorney General Joshua H. Stein, by Assistant Attorney General Michelle Harris, for the State.*

*Appellate Defender Glenn Gerding, by Assistant Appellate Defender Katy Dickinson-Shultz, for Defendant.*

GRIFFIN, Judge.

Defendant Allen Audrey appeals from the trial court's judgment activating his sentences after finding he absconded. Defendant contends the trial court abused its discretion by activating his sentences without sufficient evidence to support a finding he absconded. We hold the trial court did not err by revoking Defendant's probation.

**I. Facts and Procedural History**

Defendant pled guilty to possession of a firearm by a felon on 13 June 2022. On 25 October 2023, Officer Martin Keller, Defendant's probation officer, filed a violation report alleging several probation violations, including testing positive for illegal drugs, failing to report as directed, failing to pay court fees, and failing to complete a court ordered rehabilitation program. Defendant signed the violation report on the same date. The report set the hearing date for these violations on 13 November 2023.

On 5 November 2023, Officer Keller conducted a home visit at Defendant's residence, 2615 Piper Place, Lenoir. During the visit, Officer Keller reminded Defendant of the 13 November 2023 hearing. Defendant did not appear in court for the hearing—so, the court entered a warrant for his arrest.

On 14 November 2023, Officer Keller texted Defendant, and Defendant responded that he was aware he had missed the hearing and was attempting to obtain counsel. Defendant did not turn himself in after this exchange.

Following Defendant's failure to appear, Officer Keller made two more visits to the Piper Place residence, one on 29 November 2023 and one on 1 December 2023. Defendant was not present at either visit, prompting Officer Keller to leave a door tag on the Piper Place door containing his contact information and instructions for

Defendant to come to Officer Keller's office for an appointment on 4 December 2023. Defendant did not show up for this appointment. After Defendant missed the 4 December 2023 appointment, Officer Keller contacted local hospitals and jails to see if Defendant had been hospitalized or taken into custody. Because Officer Keller only had Defendant's phone number, he was unable to contact any of Defendant's family members. Throughout this period, Officer Keller testified that he called and texted Defendant multiple times, starting 5 November 2023. The calls typically went to Defendant's voicemail box, which was full. Defendant did not answer any communications other than the 14 November text.

On 7 December 2023, Officer Keller filed a violation report alleging Defendant had absconded by moving to another address without disclosing the move to his probation officer. Officer Keller filed an addendum to the violation report on 28 December 2023, alleging Defendant absconded by "willfully avoiding supervision or by willfully making [his] whereabouts unknown to [Officer Keller]."

After Officer Keller filed his 7 December violation report, he handed the case over to the absconder team. The absconder team visited the Piper Place residence on 13 December 2023, but Defendant was not there. The team visited Defendant's prior residence on 19 December and several homeless camps on 20 December. Defendant eventually responded to the absconder team via text and indicated his intent to turn

himself in, though he never did. On 28 December, they transferred the matter back to Officer Keller, concluding Defendant had absconded.

On 29 December 2023, Officer Josh Bracket of the probation office was conducting a visit for a different probationer at 416 Nuway Circle in Lenoir. When Officer Bracket arrived at the address, he observed Defendant fleeing from the back door of the residence and towards the woods. After Defendant hid in the woods for approximately five hours. Two months later, in February 2024, law enforcement conducted a traffic stop during which they took Defendant into custody.

On 5 March 2024, the violation report came on for hearing. At the hearing, Defendant admitted to most of the violations alleged in the 25 October 2023 violation report. However, Defendant denied the absconding violations alleged in the 7 December 2023 report and 28 December 2023 addendum. Defendant argued he had not changed his address and that he had not attempted to evade law enforcement. After receiving testimony from Officer Keller and Officer Bracket, the court found Defendant knew and had sufficient reason to know that Officer Keller was looking for him and had absconded based on both the initial 7 December 2023 violation report and the amended 28 December 2023 violation report. Defendant timely appealed.

## **II. Analysis**

Defendant argues the trial court abused its discretion by revoking his

probation because there was insufficient evidence to support a finding that he absconded. We disagree and hold the State presented sufficient evidence of Defendant absconding to support the trial court’s finding.

### **A. Standard of Review**

We review an appeal of a trial court’s judgment revoking probation and activating a defendant’s sentence based on a probation violation for abuse of discretion. *State v. Crompton*, 380 N.C. 220, 224, 868 S.E. 2d 48, 51 (2022). Thus, a trial court’s ruling may only be disturbed if the “ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision.” *State v. Murchison*, 367 N.C. 461, 464, 758 S.E.2d 356, 358 (2014) (citation and quotation marks omitted).

### **B. Revocation**

Under the Justice Reinvestment Act of 2011 (JRA), a trial court may only revoke probation and activate a defendant’s sentence for one of three violations: (1) commission of a new crime under section 15-1343(b)(1) of the North Carolina General Statutes; (2) willfully absconding under section 15-1343(b)(3a); or (3) any violation of a probation condition after two periods of confinement in response to a violation under section 15-1344(d2). N.C. Gen. Stat. § 15A-1344(a) (2023); *State v. Williams*, 243 N.C. App. 198, 200–01, 776 S.E.2d 741, 742–43 (2015) (quoting *State v. Nolen*, 228 N.C. App. 203, 205, 743 S.E.2d 729, 730 (2013)). “As regular conditions of probation, a

defendant must . . . [n]ot 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)(3a) (2023). "[A] defendant absconds when he willfully makes his whereabouts unknown to his probation officer, and the probation officer is unable to contact the defendant." *State v. Melton*, 258 N.C. App. 134, 138, 811 S.E.2d 678, 681 (2018).

A defendant can be found to have acted willfully if he had actual knowledge of his probation officer's attempts to contact him or if the probation officer's attempts to contact the defendant are sufficiently extensive that the defendant should have reasonably known his probation officer was looking for him. *Id.* at 140, 811 S.E.2d at 682. A trial court must only consider actions and evidence "to the dates alleged in the violation reports" when determining whether a probationer absconded. *Id.* at 137, 811 S.E.2d at 681.

Defendant argues his case is analogous to our decision in *State v. Melton*. In *Melton*, the defendant was on supervised probation for possession of methamphetamine and identity theft. *Id.* at 134–35, 811 S.E.2d at 679. The defendant missed five meetings with her probation officer, the last of which was scheduled for 2 November 2015. *Id.* at 135, 811 S.E.2d at 680. The probation officer made numerous phone calls and left messages for the defendant at her home with

her parents. *Id.* Although the trial court found sufficient evidence to revoke probation, we reversed this determination. *Id.* at 136, 811 S.E.2d at 680.

Two parts of our analysis in *Melton* are relevant to the present case: what evidence could be considered and whether the defendant knew her probation officer was trying to contact her. *Id.* at 137, 811 S.E.2d at 681. Because the violation report in *Melton* alleged the defendant absconded between 2 November and 4 November, we held that only evidence from that three-day period could be considered in determining whether the defendant absconded. *Id.* Thus, we only considered one missed appointment, the messages left at her home, and the missed calls. *Id.* at 137–38, 881 S.E.2d at 681. Similarly, the defendant in *Melton* gave no indication that she knew her probation officer was looking for her during the alleged absconding period. *Id.* at 139, 811 S.E.2d at 682. Thus, because she lacked actual knowledge that her probation officer was looking for her and because the officer's efforts to locate her within the alleged absconding period were not sufficient alone for her to reasonably know he was looking for her, we concluded the prosecution could not support any allegation of willfulness. *Id.*

Here, the trial court had sufficient evidence to support its finding such that it did not abuse its discretion. *See Murchison*, 367 N.C. at 464, 758 S.E.2d at 358 (explaining the high level of deference under the abuse of discretion standard of

review). The amended violation report alleged Defendant absconded by willfully making his whereabouts unknown to Officer Keller from 6 November 2023 until the amended report was filed on 28 December 2023.<sup>1</sup> Therefore, the trial court could only consider evidence between those days in determining whether Defendant absconded. Notably, this means the trial court could not consider evidence from before the 5 November 2023 visit or the 29 December 2023 incident with Officer Bracket. Thus, the remaining evidence the trial court could properly consider included Officer Keller's and the absconder team's phone calls and texts; their visits to the Piper Place residence, the hospital, the shelter, several homeless camps, and his prior address; leaving the door tag; and, most importantly, the two text messages from Defendant.

Furthermore, this case is distinguishable from *Melton*. Defendant rests his comparison with *Melton* on the fact that both the officer in *Melton* and Officer Keller left communications at the probationer's home and did not have records of their calls, which Defendant contends is insufficient notice. *Id.* at 135, 811 S.E.2d at 680. However, this characterization of the facts before us both undermines the efforts made by Officer Keller and the absconder team and misses a central distinguishing factual issue we highlighted in *Melton*. Officer Keller made greater attempts, in

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<sup>1</sup> Because the order was entered after a hearing that included evidence about the amended violation report from 28 December, which constituted a longer period of absconding, we first analyze whether there was sufficient evidence to revoke Defendant's probation based on the amended violation report before we address the original absconding report.



number and thoroughness, to find Defendant than the probation officer in *Melton*. *Id.* at 135, 811 S.E.2d at 680. Here, Officer Keller and the absconder team visited more than five locations on multiple occasions, called and texted Defendant, left at least one door tag, and *actually received* two messages from Defendant, who did not make his whereabouts known or meet with any officers. Additionally, we did not overturn revocation in *Melton* solely because of the insufficiency of the probation officer's attempts to contact the defendant; rather, we held that the prosecution could not prove willfulness because the defendant had *neither* actual knowledge nor sufficient opportunity to reasonably know that her probation officer was looking for her. *Id.* at 139, 811 S.E.2d at 682. Thus, even if we assume Officer Keller's attempts to contact Defendant were insufficient to give Defendant reasonable opportunity to know that his probation officer was looking for him, Defendant's actual knowledge that his probation officer was looking for him suffices to show willfulness. *Id.* Here, there is sufficient evidence of willfulness: Defendant's texts to both Officer Keller and the absconder team show that he knew both Officer Keller and the absconder team were looking for him, yet he made no subsequent effort to meet with either of them nor to turn himself in on the outstanding warrants for his arrest.

Because there was evidence of Defendant's actual knowledge and because of the substantial efforts made by Officer Keller and the absconding team, we hold the

trial court did not abuse its discretion by activating Defendant's sentence after finding Defendant absconded as alleged in the 28 December 2023 amended violation report. There were multiple attempts to contact him during the alleged absconding period and he admittedly knew that Officer Keller was trying to meet with him. Yet, Defendant made no effort to comply.

We need not address whether the trial court erred by finding that Defendant absconded pursuant to the 7 December 2023 violation report alleging that he changed addresses without notifying his probation officer because any such error would be harmless. Under the harmless error doctrine, a defendant must show prejudice to get relief on appeal. *State v. Malachi*, 371 N.C. 719, 734, 821 S.E.2d 407, 418 (2018). Furthermore, probation is not a constitutional right. *State v. Hewett*, 270 N.C. 348, 351, 154 S.E.2d 476, 478 (1967) ("A person convicted of crime is not given a right to probation by the United States Constitution."). For non-constitutional errors, prejudice exists when "there is a reasonable possibility that, had the error in question not been committed, a different result would have been reached at the trial out of which the appeal arises." N.C. Gen. Stat. § 15A-1443(a) (2023). "The burden of showing such prejudice . . . is upon the defendant." *Id.*

Defendant has failed to meet his burden to show prejudice. Because the trial court did not err in determining Defendant absconded by making his whereabouts

unknown subject to the 28 December 2023 violation report, the trial court acted within its discretion by revoking Defendant's probation and activating his sentence.

### **III. Conclusion**

We hold the trial court did not err by revoking Defendant's probation.

**AFFIRMED.**

Judges ZACHARY and ARROWOOD concur.

Report per Rule 30(e).