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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-113

Filed 7 May 2025

New Hanover County, No. 22CRS345439-640

STATE OF NORTH CAROLINA

v.

WILLIAM CLINARD SHORE, Defendant.

Appeal by defendant from judgment entered 28 September 2023 by Judge Clint D. Rowe in Superior Court, New Hanover County. Heard in the Court of Appeals 14 January 2025.

Attorney General Jeff Jackson, by Assistant Attorney General Madison Beveridge, for the State.

Cooper Strickland for defendant-appellant.

STROUD, Judge.

Defendant appeals the trial court's judgment revoking his probation and activating his sentence. As Defendant has not demonstrated the trial court abused its discretion in revoking his probation, it was proper for the trial court to rely on Defendant's attorney's admissions to the violations, and Defendant did not receive ineffective assistance of counsel, we affirm the trial court's judgment.

I. Background

On or about 30 March 2023, judgments were entered after Defendant pled guilty to two counts of possession of methamphetamine and Defendant was sentenced to ten to twenty-one months imprisonment; the sentence was suspended for a twelve-month period of supervised probation. On 4 May 2023, a probation violation report was filed alleging Defendant “failed to report for [a] scheduled office visit as instructed by [his] probation officer” and Defendant was charged with possession of drug paraphernalia and possession of a schedule one controlled substance. Another violation report was filed on 12 May 2023 alleging Defendant “tested positive for marijuana, methamphetamines, and amphetamines” and that Defendant admitted to the use of these drugs. Defendant was appointed a public defender on or about 22 May 2023.

A third violation report was filed 13 June 2023 alleging Defendant failed to report to a scheduled office visit on 1 June 2023 and failed to report for a violation hearing on 6 June 2023. The 13 June report also alleged Defendant failed to notify his probation officer of a change in address after the officer went to Defendant’s listed address and there was a letter posted on the front door stating that Defendant had been evicted. Finally, a fourth violation report was filed 29 June 2023 alleging “a conclusive investigation was completed [on 26 June 2023] and found that on or about” 13 June 2023 “Defendant did leave his place of residence . . . without the knowledge or permission of his probation officer and as of this date, [Defendant] has willfully

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made his whereabouts unknown thereby absconding.” Defendant also failed to report to his probation officer on 14 June 2023, was in arrearages of \$446.00, and failed to “complete TASC and all recommended treatment.”

The probation violation hearing was held 6 September 2023. The new charges on which the first violation report was based were dismissed before the violation hearing. The probation officer who appeared in court for the hearing was not Defendant’s supervising officer. He stated the grounds for the four probation violations; the trial court asked Defendant’s attorney whether his “client admit[s] those violations” and Defendant’s attorney answered “[h]e does.” The probation officer then stated they would seek revocation of Defendant’s probation due to the absconding, and Defendant’s attorney again stated “[h]e admits to those violations[.]” In response to the alleged probation violations, Defendant’s attorney largely discussed Defendant’s drug addiction and that Defendant was evicted and unemployed during this time, and explained that Defendant did not commit any new offenses after absconding but was arrested due to the probation violation report.

The probation officer present then discussed a text message Defendant sent to his supervising probation officer on 13 June 2023 acknowledging he had outstanding probation violations but that he wanted to put the matters back on the calendar to avoid absconder status; the officer told Defendant he needed to “get these matters taken care of, and [Defendant] needed to report to the office at 4:00 p.m. the next day” but Defendant never reported and had no further contact. Defendant’s attorney then

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again explained Defendant's drug addiction, stated he had "no real legal defense for" Defendant but was looking for equity since it seemed Defendant was not trying "to leave the jurisdiction and avoid detection[.]" The trial court did not ask Defendant directly whether he admitted the violations but Defendant did not object during the hearing to admitting the violations; the only time Defendant addressed the trial court was in response to questions about attorney fees.

The trial court revoked Defendant's probation in a judgment entered 28 September 2023. The trial court noted paragraphs 1-4 in the 29 June 2023 probation violation report as a basis for revocation, which included Defendant leaving his residence without knowledge or permission, failing to report to a scheduled visit with his probation officer, being in arrearages, and failing to complete the drug abuse recommended treatment. The trial court specifically checked the box that revocation was due to Defendant's "willful violation of the condition(s) that he[] not . . . abscond from supervision, G.S. 15A-1343(b)(3a), as set out above."

Defendant did not enter oral notice of appeal at the probation revocation hearing. Instead, Defendant sent a handwritten letter on a "New Hanover County Detention Facility Inmate Request Form" to the New Hanover County Clerk of Court, stating

I want to appeal my judgement in the case of 22 CRS 345439 on grounds that I recieved (sic) improper counsel and was to recieve (sic) an alternative sentence to rehab. . . I am willing to accept drug rehab in this case if the court accepts my . . . counteroffer.

This letter is undated, does not specify to which court the appeal is taken or whether the appeal was served upon the district attorney, and is not signed by Defendant's attorney. Defendant filed a petition for writ of certiorari ("PWC") with this Court on 7 June 2024.

II. Petition for Writ of Certiorari

Defendant's PWC recognizes that while Defendant's purported notice of appeal "indicates [his] intent to appeal from a specific judgment," it "contains technical defects that arguably make [it] defective" under North Carolina Rule of Appellate Procedure 4. But Defendant argues since he "has demonstrated a good-faith intent to appeal his case and the State was not misled by any mistakes in his appeal notice, this Court should hear the merits of his appeal." The State also contends the purported notice of appeal is insufficient but recognizes the decision to grant certiorari is in this Court's discretion.

Defendant's purported notice of appeal does not comply with Rule 4(b) of our Rules of Appellate Procedure since it does not specify "the court to which appeal is taken" and is not "signed by counsel of record for the party or parties taking the appeal[.]" N.C. R. App. P. 4(b). Further, the purported notice of appeal was sent to the New Hanover County Clerk of Court but was not served on the district attorney's office. *See* N.C. R. App. P. 4(a)(2) (appeal in criminal cases may be taken by "filing notice of appeal with the clerk of superior court and serving copies thereof upon all adverse parties within fourteen days after entry of the judgment"); N.C. R. App. P.

4(c) (“Service of Notice of Appeal”). While the purported notice of appeal itself does not include a date, appellate entries were filed 20 September 2023 and the judgment was signed 6 September 2023.¹ But our record does not indicate when the purported notice was filed as it is not dated. Finally, the State provides the purported notice of appeal identified Defendant’s case number as “22 CFS 345439” but after a review of the record, it seems Defendant properly identified the subject of his appeal as case number “22 CRS 345439.” Still, Defendant’s purported notice of appeal is deficient as it is not signed by his attorney, does not specify “the court to which appeal is taken[,]” is undated, and was not served on the district attorney.

“Our Supreme Court has said that a jurisdictional default, such as a failure to comply with Rule 4, precludes the appellate court from acting in any manner other than to dismiss the appeal.” *State v. Hammonds*, 218 N.C. App. 158, 162, 720 S.E.2d 820, 823 (2012) (citation and quotation marks omitted). However, “[a]bsent specific statutory language limiting the Court of Appeals’ jurisdiction, the court maintains its jurisdiction and discretionary authority to issue the prerogative writs, including certiorari.” *State v. Ledbetter*, 371 N.C. 192, 197, 814 S.E.2d 39, 43 (2018). Under

¹ We note that while the judgment was file-stamped and entered on 28 September 2023, it was signed by the judge on 6 September 2023. In his PWC, Defendant states “the appellate entries were entered on 20 September 2023, within fourteen days *after* entry of the probation revocation judgment[,]” (emphasis added), but as the judgment was not file-stamped until 28 September 2023, this would not be the case. See *State v. Miller*, 368 N.C. 729, 737, 783 S.E.2d 194, 199 (2016) (“For the purposes of entering notice of appeal in a criminal case under Rule 4(a), a judgment or an order is entered when the clerk of court records or files the judge’s decision regarding the judgment or order.” (citation, quotation marks, and ellipses omitted)).

Rule 21(a)(1) of the North Carolina Rules of Appellate Procedure, this Court has the discretion to hear an appeal in certain circumstances:

(a) Scope of the Writ.

(1) Review of the Judgments and Orders of Trial Tribunals.

The writ of certiorari may be issued in appropriate circumstances by either appellate court to permit review of the judgments and orders of trial tribunals when the right to prosecute an appeal has been lost by failure to take timely action[.]

N.C. R. App. P. 21(a)(1).

Defendant cites *Hammonds*, 218 N.C. App. 158, 720 S.E.2d 820, to assert denying his PWC would be “manifestly unjust” since “the record demonstrates . . . [D]efendant’s intent to appeal a specific judgment but the notice of appeal contains technical defects[.]” We note that in *Hammonds*, the “defendant . . . lost his appeal through no fault of his own, but rather as a result of sloppy drafting of counsel and because a failure to issue a writ of certiorari would be manifestly unjust[.]” *Id.* at 163, 720 S.E.2d at 823. Our record has no evidence that Defendant’s attorney was aware of or had any role in Defendant’s defective notice of appeal. It is clear Defendant did not enter oral notice of appeal at the conclusion of the hearing but we will not speculate as to why.

However, we also note Defendant attempted to appeal his case through a handwritten letter served on the clerk of court. Defendant also properly identified

his case number in the purported notice of appeal and the State has not indicated it would be misled but for the errors in Defendant's notice. Thus, we will exercise discretion under Rule 21 to grant Defendant's PWC. *See State v. Pierce*, ___ N.C. App. ___, ___, 906 S.E.2d 530, 532 (2024) ("A defective notice of appeal should not result in loss of the appeal as long as the intent to appeal from a specific judgment can be fairly inferred from the notice and the appellee is not misled by the mistake. Here, the State has not advanced any allegations tending to show it has been delayed, misled, or prejudiced by [the d]efendant's defective notice of appeal. [The d]efendant's intent to appeal can be "fairly inferred" from his Notice of Appeal dated 6 July 2021, despite the 15 July 2021 file stamp." (citation and quotation marks omitted)).

III. Analysis

Defendant argues (1) "[t]he trial court abused its discretion in revoking [Defendant's] probation where there was insufficient evidence to support a finding that he willfully absconded[;]" (2) "[t]he trial court erred by failing to ensure that [Defendant's] admission of the violations and waiver of his right to a hearing were knowing and voluntary[;]" and (3) Defendant "received ineffective assistance of counsel when his trial attorney admitted the absconding violation without his on-the-record consent."

A. Revocation of Defendant's Probation

Defendant first argues "[t]he trial court abused its discretion in revoking [Defendant's] probation where there was insufficient evidence to support a finding

that he willfully absconded.” Specifically, Defendant argues both that “[t]he allegations in the violation reports are insufficient to support an absconding finding” and “[t]he statements at the hearing were insufficient to support a finding of absconding.” We disagree.

A hearing to revoke a defendant’s probationary sentence only requires that the evidence be such as to reasonably satisfy the judge in the exercise of his sound discretion that the defendant has willfully violated a valid condition of probation or that the defendant has violated without lawful excuse a valid condition upon which the sentence was suspended.

Once the State has presented competent evidence establishing a defendant’s failure to comply with the terms of probation, the burden is on the defendant to demonstrate through competent evidence an inability to comply with the terms.

We review the trial court’s decision to revoke a defendant’s probation for abuse of discretion. 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.

State v. Trent, 254 N.C. App. 809, 812-13, 803 S.E.2d 224, 227 (2017) (citations, quotation marks, and brackets omitted).

Under North Carolina General Statute Section 15A-1343(b)(3a), one regular condition of probation is that a defendant “[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). Defendant largely argues he did not

willfully abscond and his probation could not have been revoked for failing to report under North Carolina General Statute Section 15A-1343(b)(3) since he has not “previously served two periods of confinement in response to probation violations[.]”

Defendant first argues that allegations of the probation violation report were not sufficient to support a finding of absconding. The relevant part of the violation report provides:

1. Regular Condition of Probation: General Statute 15A-1343(b)(3a) “Not to abscond, by willfully avoiding supervision or by willfully making the supervisee’s whereabouts unknown to the supervising probation officer” in that, on or about 06/26/2023, a conclusive investigation was completed and found that on or about 06/13/2023 . . . Defendant did leave his place of residence located at [redacted], without the prior knowledge or permission of his probation officer and as of this date, [Defendant] has willfully made his whereabouts unknown, thereby absconding.

The violation report also states Defendant failed to show for a meeting with his probation officer on 14 June 2023. Defendant then argues extensively that his absconding was not willful since he was homeless and evicted from his house, the eviction was potentially an unlawful eviction, and that being homeless “is a tragic socio-economic status, not purposeful conduct, and, absent other competent evidence, does not establish that he *willfully* absconded.” (Emphasis in original.) We appreciate that Defendant may have been evicted and that being homeless is tragic, but he fails to explain why he did not simply notify his probation officer of the eviction; even if he had no residence to live in, he still had an obligation to let his probation

officer know where he would go after the eviction.

Defendant relies heavily on *State v. Williams* to argue the violation report did not provide a sufficient basis for revocation of his probation and that the trial court could not take into account his missed meeting on 14 June 2023 since reporting to show up to scheduled meeting is a condition under North Carolina General Statute Section 1343(b)(3) and not (b)(3a); in *State v. Williams*, the defendant's probation officer alleged the defendant violated his probation by "leaving the jurisdiction without permission, failing to report as ordered for scheduled office contacts, changing his address without informing his probation officer, and absconding." 243 N.C. App. 198, 198, 776 S.E.2d 741, 742 (2015). *Williams* outlined various amendments that were made to the probation statutes:

The enactment of the JRA [the Justice Reinvestment Act of 2011] brought two significant changes to North Carolina's probation system. First, for probation violations occurring on or after 1 December 2011, the JRA limited trial courts' authority to revoke probation to those circumstances in which the probationer: (1) commits a new crime 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 any condition of probation after serving two prior periods of CRV [confinement in response to violations] under N.C. Gen.Stat. § 15A-1344(d2). *See* N.C. Gen.Stat. § 15A-1344(a). For all other probation violations, the JRA authorizes courts to alter the terms of probation pursuant to N.C. Gen.Stat. § 15A-1344(a) or impose a CRV in accordance with N.C. Gen.Stat. § 15A-1344(d2), but not to revoke probation. *Id.*

Second, the JRA made the following a regular condition of probation: Not to abscond, by willfully avoiding supervision

or by willfully making the defendant's whereabouts unknown to the supervising probation officer.

Id. at 199-200, 776 S.E.2d at 742-43 (quotation marks omitted). Then the Court noted the various probation violations alleged against the defendant:

The report alleged that “[the d]efendant failed to report for scheduled office contacts on March 3, 2014 at 1500, April 3, 2014 at 1600, April 8, 2014 at 4pm and May 8, 2014 at 1500. [The d]efendant failed to be home for a scheduled home contact on May 27, 2014.” It further alleged that “on or about April 13, 2014, [the d]efendant left his residence of 1735 Spring Valley Lake Road, Henderson, NC and he has not made his probation officer aware.” The report alleged that “on or about May 28, 2014, the probation officer was made aware that [the d]efendant had been traveling to New Jersey.” Though the report did not specifically allege that [the d]efendant violated any of the provisions of N.C. Gen.Stat. § 15A-1343(b), the allegations track language found in N.C. Gen.Stat. §§ 15A-1343(b)(2) and (3). It is clear that, pursuant to N.C. Gen.Stat. § 15A-1344(a), [the defendant's] probation could not be revoked for those violations alone.

Id. at 203, 776 S.E.2d at 744. We ultimately concluded that while “[t]he evidence was clearly sufficient to find violations of N.C. Gen.Stat. §§ 15A-1343(b)(2) and (3),” “[w]e hold that the evidence in this case does not support finding a violation of N.C. Gen.Stat. § 15A-1343(b)(3a).” *Id.* at 205, 776 S.E.2d at 746.

But in *State v. Crompton* this Court clarified the effect of our opinion in *Williams*; in *Crompton*, the defendant's probation officer filed a probation violation report on 23 May 2018 stating:

1. Regular Condition of Probation: General Statute 15A-1343(b)(3a) “Not to abscond, by willfully avoiding

supervision or by willfully making the supervisee's whereabouts unknown to the supervising probation officer" in that, THE DEFENDANT HAS FAILED TO REPORT[] AS DIRECTED BY THE OFFICER, HAS FAILED TO RETURN THE OFFICER[']S PHONE CALLS, AND HAS FAILED TO PROVIDE THE OFFICER WITH A CERTIFIABLE ADDRESS. THE DEFENDANT HAS FAILED TO MAKE HIMSELF AVAILABLE FOR SUPERVISION AS DIRECTED BY HIS OFFICER, THEREBY ABSCONDING SUPERVISION. THE OFFICER[']S LAST FACE TO FACE CONTACT WITH THE OFFENDER WAS DURING A HOME CONTACT ON 4/16/19.

270 N.C. App. 439, 441, 842 S.E.2d 106, 109 (2020), *aff'd*, 380 N.C. 220, 868 S.E.2d 48 (2022). The defendant "waived a formal reading of the violation reports and admitted the violations." *Id.* The trial court found the defendant had willfully absconded and thus revoked his probation and activated his sentence. *See id.* The defendant argued the trial court "abused its discretion when it revoked [the d]efendant's probation and activated his suspended sentences[.]" *Id.* at 442, 842 S.E.2d at 109. We specifically cited our decision in *Williams* and stated "[a] violation of Section 15A-1343(b)(3), *without more*, would not merit revocation of a defendant's probation unless the requirements of Section 15A-1344(d2) have also been met" since the defendant had not otherwise "served two periods of confinement stemming from other parole violations." *Id.* at 443, 842 S.E.2d at 110 (emphasis in original) (citing N.C. Gen. Stat. § 15A-1344(d2) (2019)). We recognized, however, that under North Carolina General Statute Section 15A-1343(b)(3a), a trial court may revoke a defendant's probation if the trial court finds the defendant had absconded. *See id.*

We then explained the requirements of North Carolina General Statute Section 15A-1343(b)(3a):

Under the plain language of Section 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). Although Section 15A-1343 does not define “willfully,” the term is well-defined by our case law. 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. Additionally, we note that establishing a defendant’s willful intent is seldom provable by direct evidence and must usually be shown through circumstantial evidence. In determining the presence or absence of the element of intent, the fact finder may consider the acts and conduct of the defendant and general circumstances existing at the time of the charged probation violation.

Id. (citations and quotation marks omitted). As the dissenting opinion relied on *Williams*, the majority then again directly addressed this issue:

In *Williams*, our Court concluded that the State failed to carry its burden of showing a defendant had absconded from supervision where the violation report entered against the defendant failed to specifically allege a violation of Section 15A-1343(b)(3a) and the defendant’s probation officer made telephone contact with the defendant on several occasions. 243 N.C. App. at 205, 776 S.E.2d at 746. In fact, in that case, the State did not even argue that the defendant had absconded from supervision. *Id.* at 200, 776 S.E.2d at 743. Accordingly, *Williams* stands for the proposition that a defendant’s probation violations, other than violations listed in Section 15A-1344(a), cannot serve as the basis for revocation of the defendant’s probation unless the requirements of Section 15A-1344(d2) are also met. This conclusion is plainly consistent with the

language of Section 15A-1344(a). N.C. Gen. Stat. § 15A-1344(a) (“The court may only revoke probation for a violation of a condition of probation under G.S. 15A-1343(b)(1) or G.S. 15A-1343(b)(3a), except as provided in G.S. 15A-1344(d2).”).

However, the dissent would now have us expand the holding of *Williams* to conclude that a violation report alleging *willful* violations of Section 15A-1343(b)(3) which together amount to the defendant “willfully avoiding supervision” or “willfully making the defendant’s whereabouts unknown to the supervising probation officer” also fail to qualify as “absconding” within the meaning of Section 15A-1343(b)(3a). Such an interpretation of *Williams* runs counter to the plain language of Section 15A-1343(b) and would work to eliminate absconding as a ground for probation revocation in our State.

Id. at 445, 842 S.E.2d at 111 (emphasis in original). The majority stated that since the violation report in *Crompton* addressed both North Carolina General Statute Section 15A-1343(b)(3) and (b)(3a), the trial court was permitted to take the “violations of Section 15A-1343(b)(3) together” to show the defendant “‘willfully avoid[ed] supervision’ or willfully ma[de] the defendant’s whereabouts unknown’ in violation of” North Carolina General Statute Section 15A-1343(b)(3a) so long as “the State subsequently proffers sufficient evidence to establish those willful violations[.]” *Id.* at 446, 842 S.E.2d at 112. The majority recognized that holding otherwise would often “prevent[] the State from using the language of Section 15A-1343(b)(3) to describe violations of Section 15A-1343(b)(3a)[.]” *Id.*

Here, while not containing as many details as the violation report in *Crompton*, the probation violation report filed on 29 June 2023 outlined that since 13 June 2023,

Defendant left his residence without informing his probation officer and “has willfully made his whereabouts unknown.” The report specifically cited North Carolina General Statute Section 15A-1343(b)(3a) and stated Defendant had willfully absconded supervision. At the hearing, a probation officer testified that after not having contact with Defendant, on 13 June 2023, Defendant sent his probation officer a text message stating he was “trying not to abscond” and asking his case be put back on the court docket, offered to wear an ankle bracelet, and stated he had “been strung out and [was] going through some things.” His probation officer responded by telling him “he needed to get these matters taken care of, and he needed to report to the office at 4:00 p.m. the next day” but Defendant “never reported, and he never had any further contact.”

By contacting his probation officer, Defendant showed he had the ability to contact the probation officer about any potential eviction, change of address, or homelessness and that his failure to do so was willful. Defendant also could have testified at the revocation hearing as to why he missed the meeting with his probation officer or why he was unable to inform the probation officer of his whereabouts. *See id.* at 448, 842 S.E.2d at 113 (“Following the State’s presentation of competent evidence establishing the absconding violation alleged by [the d]efendant’s violation report, the burden then shifted to [the d]efendant to demonstrate his inability to comply with the terms of his probation.” (citation omitted)). Instead, just as in *Crompton*, Defendant admitted to the allegations and “failed to put forth any

evidence demonstrating that his failure to comply with the requirements of his probation was not willful.” *Id.* While Defendant argues his admission was improper, which we will discuss below, we conclude “the trial court did not abuse its discretion when it revoked [the d]efendant’s probation and activated his suspended sentence pursuant to Section 15A-1344(a).” *Id.* at 449, 842 S.E.2d at 114. This argument is overruled.

B. Defendant’s Admissions

Next, Defendant contends “[t]he trial court erred by failing to ensure that [Defendant’s] admission of the violations and waiver of his right to a hearing were knowing and voluntary.” We disagree.

“When determining whether a defendant’s due process rights were violated, we apply a *de novo* standard of review.” *State v. Joyner*, 284 N.C. App. 681, 693, 877 S.E.2d 73, 83 (2022) (citation omitted). “In North Carolina, a probation revocation hearing is not a formal trial and, as such, due process does not require that the trial court personally examine a defendant regarding his admission that he violated his probation.” *State v. Sellers*, 185 N.C. App. 726, 727, 649 S.E.2d 656, 656 (2007) (footnote omitted). In *Sellers*, we addressed this issue, where the defendant appealed his probation violation revocation and activation of his prison sentence since “he did not waive a violation hearing nor did he personally admit he had violated the conditions of his probation.” *Id.* at 727, 649 S.E.2d at 656-57. We stated “[u]nlike when a defendant pleads guilty, there is no requirement that the trial court

personally examine a defendant regarding his admission that he violated his probation.” *Id.* at 728-29, 649 S.E.2d at 657. And just as in this case, in *Sellers* the defendant’s attorney admitted the probation violations, which we determined “was sufficient to meet due process[.]” *Id.* at 727, 649 S.E.2d at 657.

Defendant recognizes our authority in *Sellers* but instead cites multiple cases from other jurisdictions to assert Defendant’s counsel admitting the violations at the revocation hearing was not sufficient. However, “[w]here a panel of the Court of Appeals has decided the same issue, albeit in a different case, a subsequent panel of the same court is bound by that precedent, unless it has been overturned by a higher court.” *In re Civil Penalty*, 324 N.C. 373, 384, 379 S.E.2d 30, 37 (1989) (citation omitted). Defendant’s argument is without merit. *See Sellers*, 185 N.C. App. at 727, 649 S.E.2d at 656-57.

C. Ineffective Assistance of Counsel

Finally, Defendant argues he “received ineffective assistance of counsel when his trial attorney admitted the absconding violation without his on-the-record consent.” We disagree.

“The Sixth Amendment to the United States Constitution guarantees to all defendants the right to counsel in criminal proceedings.” *State v. Oglesby*, 382 N.C. 235, 242, 876 S.E.2d 249, 256 (2022) (citation omitted).

The right to counsel necessarily encompasses the right to effective assistance of counsel. To prevail on an IAC claim, a defendant must generally satisfy the two-prong test set

forth in *Strickland*:

First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.

Id. (citations and quotation marks omitted).

To prevail on the first prong of the *Strickland* test, the defendant must show that counsel's representation fell below an objective standard of reasonableness. *Strickland*, 466 U.S. at 688, 104 S.Ct. 2052. There exists a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance. *Id.* at 689, 104 S.Ct. 2052. Counsel is given wide latitude in matters of strategy, and the burden to show that counsel's performance fell short of the required standard is a heavy one for [the] defendant to bear.

Id. at 243, 876 S.E.2d at 256 (quotation marks omitted).

We note initially that although the preferred method for raising ineffective assistance of counsel is by motion for appropriate relief made in the trial court, a defendant may bring his ineffective assistance of counsel claim on direct appeal. On direct appeal, [a] defendant's ineffective assistance of counsel claim "will be decided on the merits when the cold record reveals that no further investigation is required, i.e., claims that may be developed and argued without such ancillary procedures as the appointment of investigators or an evidentiary hearing."

State v. Phifer, 165 N.C. App. 123, 127, 598 S.E.2d 172, 175 (2004) (citation omitted).

Here, Defendant specifically argues he received ineffective assistance of counsel since he “(1) did not receive notice of the absconding violation until the revocation hearing, (2) his counsel had limited time devoted to his defense, in part, because of his contemporaneous appointment, and (3) the trial court only interacted directly with [Defendant] regarding the award of attorney’s fees.”

As to notice, Defendant was given notice of the absconding violations the evening before the hearing, and “[h]e alert[ed his counsel] that [Defendant] would waive the necessary 24-hour notice period[.]” Perhaps Defendant did not raise a claim of defective notice on appeal because he waived notice and would thus not succeed on such a claim. *See State v. Jones*, 382 N.C. 267, 271, 876 S.E.2d 407, 411 (2022) (“The State must give the probationer notice of the hearing and its purpose, including a statement of the violations alleged. The notice, unless waived by the probationer, must be given at least 24 hours before the hearing.” (citing N.C. Gen. Stat. § 15A-1345(e) (2021))). Defendant also recognizes “a formal, on-the-record colloquy, or examination, is not required” to waive notice, but still argues his waiver of notice was not knowing and voluntary and “a knowing and voluntary waiver should occur through the written or on-the-record agreement of the probationer.” But Defendant cannot show ineffective assistance of counsel when his counsel followed the law and Defendant fails to demonstrate the waiver was not knowing or voluntary. While the trial court did not address Defendant specifically as to notice, the trial court did ask Defendant about attorney fees and Defendant did not in any way contend his

waiver was not knowing or voluntary. And after extensive review, we concluded above Defendant's admission to the violation reports was without error for the same or similar reasons as he argues here. This argument is without merit.

As to Defendant's second argument, "his counsel had limited time devoted to his defense, in part, because of his contemporaneous appointment," this argument is also without merit. Defendant's attorney stated at the hearing that "I have been representing this young man since the original charges in district court." Counsel also spoke to Defendant the evening before the probation violation hearing and was clearly aware of all violations. Nothing in our record suggests his counsel was ill-prepared and this argument is overruled.

Finally, Defendant's argument that he received ineffective assistance of counsel since "the trial court only interacted directly with [Defendant] regarding the award of attorney's fees" is without merit as we concluded above there was no error in Defendant's counsel admitting the violations on his behalf and we need not review this issue any further.

Defendant has failed to demonstrate deficient performance on behalf of his attorney. *See Oglesby*, 382 N.C. at 243, 876 S.E.2d at 256. We need not dismiss this matter for additional proceedings since the record before us is sufficient to conclude Defendant's argument as to ineffective assistance of counsel is without merit and we therefore conclude there was no error.

IV. Conclusion

STATE V. SHORE

Opinion of the Court

The trial court did not err in finding Defendant willfully absconded supervision or by revoking his probation and Defendant's attorney admitting the violations instead of Defendant did not violate due process. We also conclude Defendant's ineffective assistance of counsel claim is without merit. We therefore affirm the revocation judgment.

AFFIRMED.

Judges CARPENTER and GRIFFIN concur.

Report per Rule 30(e).