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NO. COA11-131
NORTH CAROLINA COURT OF APPEALS

Filed: 6 September 2011

STATE OF NORTH CAROLINA

v. Catawba County
No. 06CRS9157
JASON JURRELL MCFADDEN 07CRS5941

Appeal by defendant from judgments entered on or about 6 August 2010 by Judge Richard D. Boner in Superior Court, Catawba County. Heard in the Court of Appeals 29 August 2011.

Attorney General Roy A. Cooper, III, by Assistant Attorney General Floyd M. Lewis, for the State.

James N. Freeman, Jr. for defendant-appellant.

STROUD, Judge.

I. Background

On 17 April 2008, Jason Jurrell McFadden ("defendant") plead guilty to charges of assault with a deadly weapon inflicting serious injury, discharge of a weapon into occupied property, and possession of cocaine. The trial court imposed two suspended sentences and placed defendant on supervised probation for 60 months. The trial court ordered defendant to pay court costs and restitution as conditions of his probation.

On 24 June 2008, the trial court held a hearing, which defendant attended, to set the amount of restitution owed by defendant as well as defendant's payment schedule.

On 9 January 2009 and 26 October 2009, defendant's probation officer filed two probation violation reports alleging that defendant had willfully violated the monetary conditions of his probation by failing to make any of his monthly restitution payments or pay any part of his court fee obligation. The trial court held a probation revocation hearing on 2 August 2010. At that hearing, defendant admitted that he had failed to pay any amount towards his court fees or restitution owed, but denied that his failure to do so was willful. Defendant's probation officer testified that defendant had failed to make any payments, despite the fact that defendant was employed at a bakery in New York. Defendant testified that he was not aware he was required to send money to North Carolina. Defendant claimed that he did not understand the trial court's instructions at the restitution hearing. Defendant further testified that his attorney told him he would have to pay if he, "[came] into any kind of property," but not to worry about the payments if he did not have the money. Defendant claimed that

he would have paid the money had he understood the trial court's instructions.

At the conclusion of the hearing, the trial court found that defendant had willfully violated the terms and conditions of his probation and activated consecutive sentences of 20 to 33 months imprisonment. Defendant gave timely written notice of appeal on 9 August 2010 pursuant to Rule 4(a)(2) of the North Carolina Rules of Appellate Procedure.

II. Standard of Review

We review a trial court's decision to revoke a defendant's probation under an abuse of discretion standard: "The findings of the judge, if supported by competent evidence, and his judgment based thereon are not reviewable on appeal, unless there is a manifest abuse of discretion." *State v. Tennant*, 141 N.C. App. 524, 526, 540 S.E.2d 807, 808 (2000) (citations and quotation marks omitted).

III. Absence of Abuse of Discretion

On appeal, defendant first contends that the trial court erred in finding that he violated the conditions of his probation. We have held that,

"[a]ny violation of a valid condition of probation is sufficient to revoke defendant's probation. All that is required to revoke probation is evidence satisfying

the trial court in its discretion that the defendant violated a valid condition of probation without lawful excuse. The burden is on defendant to present competent evidence of his inability to comply with the conditions of probation; and that otherwise, evidence of defendant's failure to comply may justify a finding that defendant's failure to comply was wilful or without lawful excuse."

State v. Tozzi, 84 N.C. App. 517, 521, 353 S.E.2d 250, 253 (1987) (citations omitted); see also *State v. Crouch*, 74 N.C. App. 565, 567, 328 S.E.2d 833, 835 (1985).

Defendant argues that his violation was not willful. We reject defendant's argument, and find that the State's evidence was sufficient to demonstrate that defendant willfully and without lawful excuse failed to comply with the monetary terms of his probation. It was well within the trial court's discretion to reject defendant's purported explanation for his violation; "The trial judge, as the finder of the facts, is not required to accept defendant's evidence as true." *State v. Young*, 21 N.C. App. 316, 321, 204 S.E.2d 185, 188 (1974). Furthermore, it is clear that defendant understood his court fee obligation, as he signed two DCC-2 forms acknowledging that he was required to pay a total of \$785.00 in court fees as a monetary condition of probation. Accordingly, we find no error.

IV. Clerical Error

Next, defendant argues he is entitled to a new hearing, because the trial court did not make any findings in defendant's judgment and commitment forms. The State concedes that the trial court failed to check any of the boxes labeled "Findings" in the judgments. However, the State argues that this deficiency is merely a clerical error, as the trial court orally articulated its findings in open court. We agree with the State.

This Court has found that, "[a] clerical error is an error resulting from a minor mistake or inadvertence, especially in writing or copying something on the record, and not from judicial reasoning or determination." *State v. Lark*, 198 N.C. App. 82, 95, 678 S.E.2d 693, 702-3 (2009) (citations and quotation marks omitted), *disc. review denied*, 363 N.C. 808, 692 S.E.2d 111 (2010). Where a clerical error is found, the case may be remanded, "to the trial court for the limited purpose of correcting the clerical errors." *Id.* at 95, 678 S.E.2d at 703. After reviewing the transcript, we agree that the errors pointed out by defendant are indeed clerical errors. In announcing its decision, the trial court stated: "The Court's going to find the defendant's willfully, without lawful excuse, violated terms and conditions of the probationary judgment in the manner alleged in

the violation report.” The trial court’s failure to check boxes on the judgments appears to be a mechanical error that does not show any exercise of judicial discretion or reasoning. Accordingly, we remand the instant case to the trial court for the limited purpose of correcting the clerical errors in the judgments.

AFFIRMED; REMANDED FOR CORRECTION OF CLERICAL ERRORS.

Judges CALABRIA and STEELMAN concur.

Report per Rule 30(e).