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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-1142

Filed: 5 September 2017

Cumberland County, Nos. 15 CRS 1623–27

STATE OF NORTH CAROLINA

v.

DUPRI KASON BOOKER

On certiorari review of judgments entered 11 July 2016 by Judge Thomas H. Lock in Cumberland County Superior Court. Heard in the Court of Appeals 9 August 2017.

*Attorney General Joshua H. Stein, by Assistant Attorney General Teresa L. Townsend, for the State.*

*Stephen G. Driggers for defendant-appellant.*

ELMORE, Judge.

On 8 November 2013, Dupri Kason Booker (defendant) pled guilty to twelve counts of misdemeanor larceny, eleven counts of breaking or entering a motor vehicle, and one count of conspiracy to commit felony larceny. The trial court sentenced defendant to five consecutive terms of six to seventeen months of imprisonment,

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suspended defendant's sentences, and placed him on supervised probation for thirty-six months.

On 4 May 2015, the State filed probation violation reports alleging that defendant had violated the terms of his probation by: (1) being in arrears as to the monetary conditions of his probation; (2) changing his address without the knowledge or consent of his probation officer; (3) leaving North Carolina and traveling to Georgia without the knowledge or approval of his probation officer; and (4) being charged with armed robbery in Atlanta, Georgia, on 3 May 2015.

On 15 May 2015, the State filed addendums to the violation reports. The State claimed in these addendums that defendant had absconded from supervision in that:

The defendant was to report to Robeson County probation upon hi[s] arrival on 04/28/2015. The defendant did [not] report to the Robeson County Probation Office as directed and the last attempt to contact him was met with negative results. The defendant left the state and was apprehended in Fulton County Georgia and charge[d] with armed robbery.

Additional addendums were filed on 11 July 2016, but were dismissed due to the State's failure to give notice of a date in any of the alleged violations.

On 11 July 2016, the trial court held a probation violation hearing in Cumberland County Superior Court. Defendant denied the allegations in the violation reports. Defendant also informed the court that he had been acquitted of the charges in Georgia, and the State declined to proceed as to that allegation. As to

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the 4 and 15 May 2015 allegations, the trial court found that defendant willfully violated the terms of his probation without lawful excuse. The trial court further found that defendant had absconded. Accordingly, the trial court revoked defendant's probation and activated his suspended sentences. Defendant entered a written notice of appeal on 19 July 2016.

On 19 January 2017, defendant filed a petition for writ of certiorari with this Court in order to preserve his right to appellate review, conceding that his notice of appeal was defective in that it failed to designate the court to which appeal was taken. *See* N.C. R. App. P. 4(b). In our discretion under N.C. R. App. P. 21(a), we allow defendant's petition to review the trial court's judgments.

On appeal, defendant cites to our decisions in *State v. Williams*, \_\_\_ N.C. App. \_\_\_, \_\_\_, 776 S.E.2d 741 (2015), and *State v. Johnson*, \_\_\_ N.C. App. \_\_\_, \_\_\_, 783 S.E.2d 21 (2016), to support his argument that the trial court erred by revoking his probation and activating his suspended sentences. The State concedes error, and we agree.

“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. The judge's finding of such a violation, if supported by competent evidence, will not be overturned absent a showing of manifest abuse of discretion.”

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*State v. Jones*, 225 N.C. App. 181, 182, 736 S.E.2d 634, 636 (2013) (quoting *State v. Young*, 190 N.C. App. 458, 459, 660 S.E.2d 574, 576 (2008)). “ ‘Nonetheless, when a trial court’s determination relies on statutory interpretation, our review is *de novo* because those matters of statutory interpretation necessarily present questions of law.’ ” *Johnson*, \_\_\_ N.C. App. at \_\_\_, 783 S.E.2d at 24 (quoting *Moore v. Proper*, 366 N.C. 25, 30, 726 S.E.2d 812, 817 (2012)).

The Justice Reinvestment Act limits the trial court’s discretion to revoke a defendant’s probation. For probation violations occurring on or after 1 December 2011, a trial court may only revoke probation where a defendant: (1) commits a new crime in violation of N.C. Gen. Stat. § 15A-1343(b)(1); (2) absconds from 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 confinement in response to violation under N.C. Gen. Stat. § 15A-1344(d2). See N.C. Gen. Stat. § 15A-1344(a) (2015). Absconding is defined by N.C. Gen. Stat. § 15A-1343(b)(3a) as when a defendant willfully avoids supervision or makes his whereabouts unknown.

Here, the State’s probation reports alleged that defendant absconded by: (1) leaving the State without permission; (2) changing his address without notifying his probation officer; and (3) failing to report to his probation officer. These actions, while constituting violations of N.C. Gen. Stat. §§ 15A-1343(b)(2) and (3), “do not rise to ‘absconding supervision’ in violation of N.C. Gen. Stat. § 15A-1343(b)(3a).” *Johnson*,

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\_\_\_ N.C. App. at \_\_\_, 783 S.E.2d at 25. Furthermore, mere allegations that a “[d]efendant’s actions constituted ‘abscond[ing] supervision,’ . . . cannot convert violations of N.C. Gen. Stat. §§ 15A-1343(b)(2) and (3) into a violation of N.C. Gen. Stat. § 15A-1343(b)(3a).” *Williams*, \_\_\_ N.C. App. at \_\_\_, 776 S.E.2d at 745; *see also Johnson*, \_\_\_ N.C. App. at \_\_\_, 783 S.E.2d at 26 (“[A] defendant informing his probation officer he would not attend an office visit the following day and then subsequently failing to report for the visit, does not, without more, violate N.C. Gen. Stat. § 15A-1343(b)(3a) when these *exact actions* violate the explicit language of a wholly separate regular condition of probation which does not allow for revocation and activation of a suspended sentence.”).

Accordingly, under *Williams* and *Johnson*, the probation violation reports were insufficient to support a finding that defendant absconded in violation of N.C. Gen. Stat. § 15A-1343(b)(3a). We thus hold that the trial court erred by revoking defendant’s probation and activating his suspended sentences, vacate the resulting judgments, and remand for further proceedings, if any.

VACATED AND REMANDED.

Judges DIETZ and ARROWOOD concur.

Report per Rule 30(e).