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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-683

Filed: 21 February 2017

New Hanover County, Nos. 15 CRS 1309-1311

STATE OF NORTH CAROLINA

v.

JOYCE MAE NORRIS, Defendant.

Appeal by defendant from judgments entered 2 February 2016 by Judge Phyllis M. Gorham in New Hanover County Superior Court. Heard in the Court of Appeals 11 January 2017.

Attorney General Joshua H. Stein, by Assistant Attorney General Brittany Brown, for the State.

Peter Wood for defendant.

ZACHARY, Judge.

Defendant Joyce Mae Norris appeals from judgments revoking her probation and activating her suspended sentences. For the reasons that follow, we affirm the trial court's judgments and remand for the correction of clerical errors.

I. Background

On 8 May 2014, defendant pleaded guilty to one count of each of the following criminal offenses: driving while impaired (DWI), felony hit and run resulting in

serious injury or death, felony fleeing to elude arrest, and assault with a deadly weapon on a government official. Defendant received a consolidated sentence of 17 to 34 months' imprisonment for the charges of eluding arrest and assault on government official, and she received a 12-month concurrent sentence for the DWI charge. She also received a consecutive sentence of 17 to 30 months' for the felony hit and run charge. All of defendant's sentences were suspended and she was placed on supervised probation for 24 months.

On 23 February 2015, defendant's probation officer, Jeffrey Wasic (Officer Wasic), completed a probation violation report alleging that defendant had, *inter alia*, absconded from supervision. The absconding violation was alleged in Paragraph 1 of the 23 February 2015 violation report. Officer Wasic completed two additional violation reports, on 1 July 2015 and 23 September 2015, both of which alleged that defendant had violated her probation by committing various criminal offenses. On 1 February 2016, the trial court held a probation violation hearing, in which Officer Wasic testified about the allegations contained in his reports. At the conclusion of the hearing, the trial court found that defendant had absconded, revoked her probation, and activated all three of her suspended sentences. The trial court entered written judgments to that effect on 2 February 2016. Defendant appeals.

II. Revocation of Defendant's Probation

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Defendant's sole argument on appeal is that because the State presented insufficient evidence to support a finding that she willfully absconded from supervision, the trial court erred by revoking her probation and activating her sentences. We disagree.

A. Standard of Review

“A proceeding to revoke probation [is] often regarded as informal or summary, and the court is not bound by strict rules of evidence. An alleged violation by a defendant of a condition upon which his sentence is suspended need not be proven beyond a reasonable doubt.” *State v. Tennant*, 141 N.C. App. 524, 526, 540 S.E.2d 807, 808 (2000) (citations and internal quotation marks omitted). Rather, the evidence presented at a probation revocation hearing need only “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.” *State v. Young*, 190 N.C. App. 458, 459, 660 S.E.2d 574, 576 (2008). “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[,]” *id.*, which results only when “the 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. Hennis*, 323 N.C. 279, 285, 372 S.E.2d 523, 527 (1988) (citation omitted).

B. Absconding

In 2011, the General Assembly limited the trial court's ability to revoke a defendant's probation by passing the Justice Reinvestment Act (JRA), which amended, *inter alia*, our probation statutes. More specifically, the JRA amended subsection 15A-1344(a) to provide that a trial court has the authority to revoke probation and activate a suspended sentence only when the defendant: (1) violates N.C. Gen. Stat. § 15A-1343(b)(1) by committing a new criminal offense; (2) violates N.C. Gen. Stat. § 15A-1343(b)(3a) by absconding from supervision; 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) (2015). Pursuant to subdivision 15A-1343(b)(3a), a defendant absconds "by willfully avoiding supervision or by willfully making the defendant's whereabouts unknown to the supervising probation officer[.]"

Defendant argues that the trial court abused its discretion in revoking her probation because her failure to report for appointments with Officer Wasic did not constitute absconding. In support of her contention, defendant relies on this Court's decision in *State v. Williams*, where the probation officer filed a report alleging that the defendant had violated multiple conditions of his probation, including the requirement that he not willfully abscond from supervision. __ N.C. App. __, __, 776 S.E.2d 741, 742 (2015). Evidence presented at the defendant's probation violation

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hearing established that the defendant had changed his address without notifying his supervising officer, missed several scheduled meetings with his probation officer, and left the State several times without permission. *Id.* After it concluded the hearing by finding that the defendant had “willful[ly] violat[ed] . . . the terms and conditions of probation,” the trial court revoked the defendant’s probation and activated his sentence. *Id.* at __, 776 S.E.2d at 744. Absent from the trial court’s oral findings and written judgment, however, was a specific finding that the defendant had absconded from supervision, in violation of subdivision 15A-1343(b)(3a). *Id.* On appeal, this Court held that the State’s evidence only established violations of N.C. Gen. Stat. §§ 15A-1343(b)(2)-(3), neither of which are permissible grounds for revocation. *Id.* at __, 776 S.E.2d at 745; *see* N.C. Gen. Stat. §§ 15A-1343(b)(2)-(3) (requiring, respectively, that a probationer “[r]emain within the jurisdiction of the court unless granted written permission to leave” and “[r]eport as directed . . . to the [probation] officer at reasonable times and places and in a reasonable manner”). As the probation officer had been in regular telephone contact with the defendant and was generally aware of his whereabouts during the relevant times, the *Williams* Court concluded that the defendant had not willfully absconded from supervision and reversed trial court’s judgment revoking defendant’s probation. *Id.* at __, 776 S.E.2d at 746.

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The present case is easily distinguished from *Williams* in several ways. At the revocation hearing, the trial court specifically found that defendant had “willfully violated the condition of absconding.” This finding was supported by the evidence and was well within the trial court’s discretion. On 3 February 2015, defendant missed an office appointment with Officer Wasic that was scheduled for 9:00 a.m. After speaking with Officer Wasic by telephone and agreeing to reschedule the appointment for 2:00 p.m. that same afternoon, defendant never appeared. At approximately 2:45 p.m. on 3 February 2015, Officer Wasic left a voicemail for defendant and requested a call back, but defendant failed to do so. Officer Wasic called defendant again the next day, but she did not answer and her voice mailbox was full. Defendant did not return Officer Wasic’s 4 February 2015 phone call. When Officer Wasic went to defendant’s residence on 11 February 2015, he spoke with defendant’s husband—who neither confirmed nor denied that she was home at the time of the visit—and left a card that instructed defendant to report for an 8:30 a.m. office appointment the next morning. However, defendant failed either to attend the 8:30 a.m. appointment or to provide an explanation for her absence. Once it was confirmed that defendant was not in law enforcement’s custody as of 18 February 2015, Officer Wasic proceeded to prepare a probation violation report for, *inter alia*, defendant’s “refus[al] to make herself available for supervision as instructed by the probation officer, thereby absconding probation supervision.” (all caps omitted). At

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the time the violation report was filed on 23 February 2015, Officer Wasic had been unable to contact defendant for at least twenty days. During that time period, defendant missed three appointments, including the 2:00 p.m., 3 February 2015 appointment that she was actively involved in scheduling. Despite multiple phone calls and a home visit by Officer Wasic, defendant, unlike the defendant in *Williams*, failed to remain in contact with her probation officer or otherwise keep him apprised of her whereabouts. All told, between 3 February and 23 February 2015, Officer Wasic could not locate defendant and was unable to supervise her in any manner. Given these circumstances, the trial court did not abuse its discretion by determining that defendant had absconded, as the State's evidence established that she willfully avoided Officer Wasic's supervision. See N.C. Gen. Stat. § 15A-1343(b)(3a). Consequently, we affirm the trial court's judgments.

Before concluding, we must address clerical errors contained in the findings portion of each of the trial court's written judgments. "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 (2009) (internal quotation marks, brackets, and citations omitted), *disc. review denied*, 363 N.C. 808, 692 S.E.2d 111 (2010).

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The pre-printed judgment forms that the trial court used included five potential findings of fact and various, optional subsections. Finding 3 reads, “The condition(s) violated and the facts of each violation are as set forth (*check all that apply*).” In each of its three written judgments, the trial court “checked” boxes 3(a) and 3(b), incorporating by reference, respectively, “Paragraph(s) 1 of the Violation Report or Notice dated 7/01/2015” and “Paragraph(s) 1-3 of the Violation Report or Notice dated 9/23/2015.” However, neither the “7/01/2015” nor the “9/23/2015” violation report alleged that defendant was an absconder; instead, those reports alleged that defendant had, *inter alia*, committed new criminal offenses while on probation. The trial court should have incorporated by reference Paragraph 1 of Officer Wasic’s 23 February 2015 violation report, which alleged that defendant had absconded from supervision during the period discussed at the violation hearing. Our review of the record reveals that after the State and defendant presented evidence at the violation hearing, both parties confined their arguments to the absconding allegation. In addition, the trial court’s oral findings were limited to the alleged absconding violation, and that violation was clearly the only ground upon which the court revoked defendant’s probation. Accordingly, we remand the judgments to the trial court for correction of the clerical errors contained in its written findings—the references to the “7/01/2015” and “9/23/2015” violation reports in each written judgment form should be deleted, and the 23 February 2015 violation report should

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be incorporated by reference into each judgment by checking box 3(a). *See State v. Smith*, 188 N.C. App. 842, 845, 656 S.E.2d 685, 696 (2008) (“When, on appeal, a clerical error is discovered in the trial court’s judgment or order, it is appropriate to remand the case to the trial court for correction because of the importance that the record speak the truth.” (internal quotation marks omitted)).

III. Conclusion

The trial court did not err by revoking defendant’s probation based on its determination that she had violated N.C. Gen. Stat. § 15A-1343(b)(3a) by willfully absconding from supervision. Accordingly, we affirm the judgments of the trial court. We remand, however, to allow the trial court to correct the clerical errors noted above.

AFFIRMED AND REMANDED.

Judges ELMORE and DILLON concur.

Report per Rule 30(e).