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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-1118

Filed 7 May 2024

Onslow County, Nos. 21CRS769, 776

STATE OF NORTH CAROLINA

v.

JUSTIN HENRY HAMMOND, Defendant.

Appeal by defendant from judgments entered 13 June 2022 by Judge Bob R. Cherry in Onslow County Superior Court. Heard in the Court of Appeals 16 April 2024.

Attorney General Joshua H. Stein, by Assistant Attorney General BreAnna J. VanHook and Special Deputy Attorney General Daniel P. O'Brien, for the State.

Richard Croutharmel, for defendant-appellant.

FLOOD, Judge.

Justin Henry Hammond (“Defendant”) appeals from judgments entered 13 June 2023, arguing the trial court (A) abused its discretion in revoking Defendant’s probation for absconding where the probation violation reports failed to allege absconding and therefore deprived Defendant of proper notice, and (B) lacked subject matter jurisdiction to revoke Defendant’s probation after his probationary period

expired without finding good cause. After careful review, we conclude the trial court did not abuse its discretion because the violation reports were sufficient to put Defendant on notice of absconding. We further conclude, however, the trial court lacked subject matter jurisdiction because it failed to find good cause to revoke Defendant's probation after his probationary period expired. We therefore remand the trial court's judgments for further findings as to whether good cause existed, in accordance with N.C. Gen. Stat. § 15A-1344(f)(3) (2023).

I. Factual and Procedural Background

On 1 June 2020, Defendant was found guilty in Carteret County Superior Court of felony breaking and entering, larceny, and financial card theft, and was sentenced to two suspended eight-to-nineteen-month prison sentences with twenty-four months' supervised probation. Defendant's probation was thereafter transferred to Onslow County, North Carolina. A probation officer filed probation violation reports on 8 September, 13 September, and 8 November 2021, alleging Defendant failed to pay costs, failed to provide a DNA sample, and was convicted of simple assault while on probation. Following a hearing on 30 November 2021 in Onslow County Superior Court, the trial court filed two orders on 25 January 2022 in which it modified Defendant's financial conditions of probation. Shortly thereafter, on 8 February 2022, another probation officer filed violation reports against Defendant, alleging Defendant was in arrears on his financial obligations. Following a hearing on 21 March 2022, the trial court filed two orders on 22 March 2022 extending

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Defendant's probation by twelve months.

On 12 July 2022, the probation officer filed violation reports (the "July Reports"), alleging Defendant failed to report to the probation officer and failed to pay monies ordered. The July Reports read, in relevant part:

1. "Report as directed by the Court, Commission or the supervising officer to the Officer at reasonable times and places . . ." in that ON 6/23/2022 AT 17:48, PPO ATTEMPTED TO MAKE CONTACT WITH THE OFFENDER AT THE OFFENDERS LAST KNOWN ADDRESS OF 144 OAK STREET, HUBERT, NC. PPO WAS UNABLE TO MAKE CONTACT WITH THE OFFENDER AND PROCEEDED TO LEAVE A DOOR KNOCKER ATTACHED TO THE FRONT DOOR INSTRUCTING THE OFFENDER TO REPORT TO THE PROBATION OFFICE ON 6/24/2022 AT 9AM. OFFENDER FAILED TO REPORT AS INSTRUCTED AND HAS MADE NO EFFORT TO CONTACT PPO.

2. Condition of Probation "The defendant shall pay to the Clerk of Superior Court the "Total Amount Due" as directed by the Court or probation officer" in that OFFENDER IS CURRENTLY \$480.00 IN ARREARS WITH AN OUTSTANDING BALANCE OF \$1435.00.

On 25 August 2022, the probation officer filed additional violation reports (the "August Reports"), alleging Defendant absconded. The August Reports read, in relevant part:

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 6/23/2022, AND AFTER NUMEROUS ATTEMPTS TO LOCATE THE OFFENDER AT HIS LAST KNOWN APPROVED RESIDENCE OF 144

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OAK STREET, HUBERT, NC (7/8/2022, 7/12/2022, 07/13/2022, 08/09/2022, 08/17/2022), THE SAID OFFENDER HAS REFUSED TO MAKE HIMSELF AVAILABLE FOR SUPERVISION, THEREBY ABSCONDING SUPERVISION. THE OFFENDERS CURRENT WHEREABOUTS ARE UNKNOWN.

On 19 April 2023, the State served an Order for Arrest on Defendant. On 13 June 2023, this matter came on for hearing before the trial court. At the hearing, the prosecutor read the violation reports aloud to Defendant, who, through counsel, admitted to the violations alleged in the July and August Reports. The trial court subsequently revoked Defendant's probation and ordered Defendant to serve his two consecutive prison sentences. The trial court checked box "5a." on both judgment forms, indicating the court found Defendant willfully violated a condition of his probation by either committing a criminal offense or absconding.

On 26 June 2023, Defendant filed a *pro se* notice of appeal, indicating an appeal from his "probation violation sentencing" on 13 June 2023. Defendant failed to specify the judgments from which he was appealing, however, and the notice of appeal was not served on the State. On 3 July 2023, the trial court ordered that Defendant's appeal was timely filed, found Defendant indigent, and ordered he be represented by the Appellate Defender's Office.

II. Jurisdiction

As a preliminary matter, we consider Defendant's failure to identify on his written notice of appeal the judgments from which his appeal is taken, and his failure

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to serve the State.

As this Court has consistently provided, failure to give proper notice of appeal is a jurisdictional defect. *See Von Ramm v. Von Ramm*, 99 N.C. App. 153, 156, 392 S.E.2d 422, 424 (1990). “Proper notice of appeal requires that a party shall designate the judgment or order from which appeal is taken[.]” *Id.* at 156, 392 S.E.2d at 424 (quoting N.C.R. App. P. 3(d)) (internal quotation marks omitted). A notice of appeal may be liberally construed and provide this Court jurisdiction, however, if “the intent to appeal from a specific judgment can be *fairly inferred* from the notice and the appellee is not misled by the mistake.” *Id.* at 156–57, 392 S.E.2d at 424 (citation omitted).

This Court has often found that an appellant’s failure to specify the judgment or order in its notice of appeal does not deprive this Court of jurisdiction, where the intent to appeal from a specific judgment can be fairly inferred and the appellee was not misled by the mistake. *See, e.g., Strauss v. Hunt*, 140 N.C. App. 345, 350, 536 S.E.2d 636, 640 (2000) (finding the appellant’s referring to one order in her notice of appeal allowed this Court to fairly infer the appellant’s intent to appeal an earlier order and the appellee was not misled); *Stephenson v. Bartlett*, 177 N.C. App. 239, 243, 628 S.E.2d 442, 444–45 (2006) (finding intent to appeal to this Court could be fairly inferred despite the appellant’s failure to indicate this Court as the court to which appeal was taken and the appellees were not misled by the appellant’s mistake); *but see State v. Gantt*, 271 N.C. App. 472, 474, 844 S.E.2d 344, 346 (2020)

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(holding a failure to designate the judgment from which the appellant appealed, failure to designate the court to which the judgment was being appealed, and failure to properly certify service, warranted dismissal of the appellant’s appeal).

“A written notice of appeal in a criminal proceeding must be filed with ‘the clerk of superior court and serv[ed] . . . upon all adverse parties within fourteen days after entry of the judgment or order[.]’” *State v. Thorne*, 279 N.C. App. 655, 658, 865 S.E.2d 768, 771 (2021) (quoting N.C. R. App. P. 4(a)(2)). This Court, however, has recognized that failure to serve the State is “not the sort[] of defect[] requiring dismissal of an appeal on a jurisdictional basis.” *State v. Hammond*, 288 N.C. App. 58, 62, 884 S.E.2d 767, 770 (2023) (internal quotation marks and citation omitted).

Here, Defendant’s notice of appeal refers to his “probation violation sentencing” and includes the date 13 June 2023—the date the trial court entered the two judgments at issue. Because Defendant referenced his probation violation hearing and specifically referred to the dates both judgments were entered, Defendant’s intent to appeal from the 13 June 2023 judgments can be fairly inferred by this Court. *See Hunt*, 140 N.C. App. at 350, 536 S.E.2d at 640. Further, the trial court entered an order that Defendant’s notice of appeal was timely, and the State was able to respond to Defendant’s appeal of both judgments. The State therefore was not misled by Defendant’s mistake. *See Von Ramm*, 99 N.C. App. at 156–57, 392 S.E.2d at 424.

Finally, this Court has often elected to proceed on the merits where *pro se*

notice of appeal was not properly served on the State. *See, e.g., Thorne*, 279 N.C. App. at 659, 865 S.E.2d at 771; *Hammond*, 288 N.C. App. at 62, 884 S.E.2d at 770. This Court is therefore not deprived of jurisdiction due to Defendant’s failure to identify the judgments from which appeal is taken or failure to serve the State. *See Von Ramm*, 99 N.C. App. at 156–57, 392 S.E.2d at 424. As such, we dismiss Defendant’s concurrently-filed petition for writ of certiorari, and we proceed to the merits of Defendant’s claims.

III. Analysis

On appeal, Defendant contends the trial court abused its discretion in revoking Defendant’s probation for absconding, where the violation reports failed to allege absconding, thereby depriving Defendant of proper notice. Defendant further contends the trial court lacked subject matter jurisdiction to revoke Defendant’s probation after his probationary period expired, as the trial court failed to find good cause. We address each argument, in turn.

A. Probation Revocation

Defendant contends the violation reports deprived him of proper notice because they were not based on the “absconding” provisions under N.C. Gen. Stat. § 15A-1343(b)(3a) (2023). After careful consideration, 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[.]”

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State v. Young, 190 N.C. App. 458, 459, 660 S.E.2d 574, 576 (2008) (citation and internal quotation marks omitted). The trial court’s decision to revoke probation is reviewed for abuse of discretion. *See id.* at 459, 660 S.E.2d at 576. Abuse of discretion occurs when the trial 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. Campbell*, 359 N.C. 644, 673, 617 S.E.2d 1, 19 (2005) (citation omitted).

A defendant’s probation may only be revoked where he commits a new criminal offense in violation of N.C. Gen. Stat. § 15A-1343(b)(1), absconds supervision in violation of section 15A-1343(b)(3a), or violates any condition of probation after previously serving two periods of confinement resulting from violations of section 15A-1344(d2). N.C. Gen. Stat. § 15A-1344(a) (2023); *see also State v. Johnson*, 246 N.C. App. 132, 136, 782 S.E.2d 549, 552–53 (2016). A defendant absconds 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). “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.’” *State v. Bradsher*, 255 N.C. App. 625, 633, 805 S.E.2d 191, 196 (2017) (citation omitted).

“Before revoking a defendant’s probation, a trial court must conduct a hearing to determine whether the defendant’s probation should be revoked, unless the defendant waives the hearing.” *State v. Moore*, 370 N.C. 338, 340, 807 S.E.2d 550,

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552 (2017) (citing N.C. Gen. Stat. § 15A-1345(e) (2023)). “The State must give the probationer notice of the hearing and its purpose, including a statement of the violations alleged.” N.C. Gen. Stat. § 15A-1345(e). “[N]otice of the factual allegations—the specific behavior—that constituted the violation [is] enough [to satisfy the statutory requirements].” *Moore*, 370 N.C. at 342, 807 S.E.2d 550 at 553.

Our Supreme Court has considered the notice requirement described in *Moore* in cases where a defendant appealed from violation reports alleging the defendant absconded and admitted to the violations. For instance, in *State v. Crompton*, a probation officer issued probation violation reports against the defendant that alleged absconding where the defendant “(1) failed to report to the office as directed by his supervising officer, (2) failed to return his supervising officer’s telephone calls, (3) failed to provide a certifiable address, and (4) generally failed to make himself available for supervision as directed by his officer.” 380 N.C. 220, 226, 868 S.E.2d 48, 52 (2022). The defendant admitted to committing the alleged probation violations, including absconding supervision. *Id.* at 223, 868 S.E.2d at 50. Upon review, our Supreme Court concluded that the trial court did not abuse its discretion in revoking the defendant’s probation and activating his suspended sentence, because the violation reports satisfied the notice requirements set forth in *Moore*, and the defendant’s admission to willfully making himself unavailable for supervision demonstrated that the defendant absconded. *Id.* at 226–27, 868 S.E.2d at 52–53.

This Court has upheld decisions to revoke probation based on absconding

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where the evidence shows probation officers unsuccessfully attempted to contact a defendant, and the defendant did not report to the probation office. In *State v. Thorne*, for example, the defendant “failed to appear to otherwise contact his probation officer for at least [twenty-two] days,” and the probation officer “went twice to [the d]efendant’s last known address to locate [the d]efendant, but [the d]efendant was not there, and [the d]efendant did not report to the probation office after [the probation officer] left a message with [the d]efendant’s relatives asking him to do so.” 279 N.C. App. 655, 661, 865 S.E.2d 768, 773 (2021). Upon review, this Court held that the trial court did not abuse its discretion in revoking the defendant’s probation for absconding, because the trial court had discretion in determining the weight and credibility of the evidence. *Id.* at 662, 865 S.E.2d at 773.

Similarly, in *State v. Rucker*, probation officers attempted six home visits to verify that the defendant lived at the address he provided, but the defendant was not present for any of the visits. 271 N.C. App. 370, 377, 843 S.E.2d 710, 715 (2020). On two of the six visits, the probation officers were informed by individuals who knew the defendant that he either no longer lived at the residence or planned to move from there. *Id.* at 377, 843 S.E.2d at 715. The probation officers left a tag on the door of the residence that instructed the defendant to report to the probation office, and the defendant never did. *Id.* at 377, 843 S.E.2d at 715. On appeal, this Court held that the “defendant was properly found to have absconded because his whereabouts were truly unknown to probation officers[.]” reasoning that the State’s evidence, “reflecting

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[the] defendant's continuous, willful pattern of avoiding supervision and making his whereabouts unknown[,]” was sufficient to support the trial court's exercise of discretion in revoking the defendant's probation based on absconding. *Id.* at 377, 843 S.E.2d at 715–16.

Here, as in *Thorne*, the probation officers attempted to contact Defendant at his home, but he was not there and failed to later report to the probation office. *See Thorne*, 279 N.C. App. at 661, 865 S.E.2d at 773. Further, as in *Rucker*, here the probation officers unsuccessfully attempted to contact Defendant six times and left a door knocker instructing Defendant to appear at the probation office, but Defendant did not comply. *See Rucker*, 271 N.C. App. at 377, 843 S.E.2d at 715. The fact that the probation officers did not attempt to contact, nor were contacted by, other individuals who knew Defendant is immaterial. *See id.* at 378, 843 S.E.2d at 716 (in which this fact was immaterial where the defendant's continuous pattern of avoiding supervision was sufficient to support revoking his probation based on absconding); *see also Thorne*, 279 N.C. App. at 662, 865 S.E.2d at 773 (in which this fact was immaterial where the trial court had discretion in determining the weight and credibility of the evidence). Finally, as in *Crompton*, Defendant admitted to the violations contained in both of the probation violation reports. *Crompton*, 380 N.C. at 223, 868 S.E.2d at 50. The violation reports here are also similar to those in *Crompton*, alleging Defendant failed to report to the probation officer as instructed and failed to make himself available for supervision. *Id.* at 226, 868 S.E.2d at 52.

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This evidence supports a conclusion not only that the July and August Reports satisfy the notice requirements of *Moore*, but that the trial court properly acted in its discretion by weighing the evidence that showed Defendant willfully absconded by making his whereabouts unknown to the probation officer. *See Crompton*, 380 N.C. at 226–27, 868 S.E.2d at 52–53; *see also* N.C. Gen. Stat. § 15A-1343(b)(3a); *Moore*, 370 N.C. at 342, 807 S.E.2d 550 at 553.

Defendant, however, argues the facts of this case are indistinguishable from the cases of *State v. Williams* and *State v. Krider*. We disagree.

In *Williams*, this Court concluded the State’s evidence did not support a finding that the defendant had absconded, where the boxes on the judgment form did not allege absconding because they were not checked. 243 N.C. App. 198, 202–03, 776 S.E.2d 741, 744 (2015) (“Neither of those boxes were checked and therefore the judgment did not include a specific finding that Defendant [absconded][.]”). Here, however, the relevant box of “5a.,” which reflects a trial court’s finding that alleges absconding, was checked, indicating the trial court made a finding in support of revocation of Defendant’s probation—specifically, that Defendant either committed a new criminal offense or absconded. *See id.* at 202, 776 S.E.2d at 744. In *Krider*, our Supreme Court upheld this Court’s decision that the State failed to present sufficient evidence to support the trial court’s conclusion that the defendant had absconded, where the probation officer contacted the defendant only once before filing a probation violation report. 371 N.C. 466, 818 S.E.2d 102, *aff’g in part*, 258 N.C. App. 111, 112,

116–17, 810 S.E.2d 828, 829, 831–32 (2018). Here, however, the probation officers attempted to contact Defendant six times and left a tag on the door of his last known residence, but were unable to contact Defendant. The facts of this case are neither similar to those in *Williams* nor to those in *Krider*, and Defendant’s reliance on these cases is therefore misplaced.

Upon our review, we conclude the July and August Reports satisfy the notice requirements as articulated in *Moore* and, based on the evidence presented by the State as well as Defendant’s admitting to the allegations in the reports, the reports sufficiently alleged absconding. *See Moore*, 370 N.C. at 342, 807 S.E.2d 550 at 553; *see also Crompton*, 380 N.C. at 226–27, 868 S.E.2d at 52–53. Accordingly, we cannot say the trial court’s decision to revoke Defendant’s probation and activate his prison sentences was “manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision.” *Campbell*, 359 N.C. at 673, 617 S.E.2d at 19. The trial court therefore did not abuse its discretion. *See Young*, 190 N.C. App. at 459, 660 S.E.2d at 576.

B. Finding of Good Cause

Defendant next argues the trial court lacked subject matter jurisdiction to revoke Defendant’s probation and activate his prison sentences after his probationary period expired, where the trial court failed to find good cause. After careful consideration, we agree.

“[W]hether a trial court has the authority to revoke a defendant’s probation

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after the defendant’s term of probation has expired is a jurisdictional question[,]” and issues relating to subject matter jurisdiction are reviewed *de novo*. *State v. Geter*, 383 N.C. 484, 488–89, 881 S.E.2d 209, 213 (2022) (citations omitted). Further, per N.C. Gen. Stat. § 15A-1344(f), the trial court has jurisdiction to “extend, modify, or revoke [a defendant’s] probation after the expiration of the period of probation if all of the following apply:”

(1) Before the expiration of the period of probation the State has filed a written violation report with the clerk indicating its intent to conduct a hearing on one or more violations of one or more conditions of probation.

(2) The court finds that the probationer did violate one or more conditions of probation prior to the expiration of the period of probation.

(3) The court finds for good cause shown and stated that the probation should be extended, modified, or revoked.

N.C. Gen. Stat. § 15A-1344(f) (2023). The trial court is required “to make an *additional* finding of ‘good cause shown and stated’ to justify the revocation of probation even though the defendant’s probation term has expired.” *State v. Morgan*, 372 N.C. 609, 617, 831 S.E.2d 254, 259 (2019). “What constitutes ‘good cause shown and stated’ is a case-by-case, fact-specific determination which requires a trial court to consider the particular circumstances which mandate that good cause be shown.” *Geter*, 383 N.C. at 493, 881 S.E.2d at 215. Remand to the trial court is an appropriate remedy where the record may contain evidence that would allow the trial court to make a finding of good cause. *See Morgan*, 372 N.C. at 618, 831 S.E.2d at 260 (“[W]e

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are unable to say from our review of the record that no evidence exists that would allow the trial court on remand to make a finding of ‘good cause shown and stated[.]’” (citation omitted).

Here, the Record on appeal does not demonstrate the trial court made an additional finding of “good cause shown and stated” to justify revocation of Defendant’s probation after the probationary period expired. *See Morgan*, 372 N.C. at 617, 831 S.E.2d at 259; *see also* N.C. Gen. Stat. § 15A-1344(f). The trial court therefore lacked jurisdiction to revoke Defendant’s probation after the probationary period expired. *See Geter*, 383 N.C. at 488–89, 881 S.E.2d at 213. Our review of the Record on appeal, however, indicates that there may be evidence that would allow the trial court to make a finding of “good cause shown and stated.” *See Morgan*, 372 N.C. at 618, 831 S.E.2d at 260. As a result, we “remand to the trial court for a finding of whether good cause exists to revoke [D]efendant’s probation despite the expiration of his probationary period and—assuming good cause exists—to make a finding in conformity with [N.C. Gen. Stat.] § 15A-1344(f)(3).” *See id.* at 618, 831 S.E.2d at 260; *see also Geter*, 383 N.C. at 494–95, 881 S.E.2d at 216 (finding the trial court did not abuse its discretion in finding good cause existed to revoke the defendant’s probation one year after the expiration of his probation).

IV. Conclusion

We conclude the trial court did not abuse its discretion in revoking Defendant’s probation because the violation reports sufficiently alleged absconding where they

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provided Defendant notice of absconding, and the evidence shows Defendant willfully absconded by making his whereabouts unknown to the probation officer. We further conclude, however, the trial court lacked subject matter jurisdiction to revoke Defendant's probation after the probationary period expired, as it failed to make the requisite finding of good cause. We therefore remand the trial court's judgments for further findings as to whether good cause existed.

NO ERROR in part, and REMANDED in part.

Judges ZACHARY and COLLINS concur.

Report per Rule 30(e).