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NO. COA10-334

NORTH CAROLINA COURT OF APPEALS

Filed: 7 September 2010

STATE OF NORTH CAROLINA

v.

Rockingham County  
Nos. 09 CRS 410-11

MAURICE WILLIAMSON

Appeal by defendant from judgments entered 4 August 2009 by Judge Ripley E. Rand in Rockingham County Superior Court. Heard in the Court of Appeals 23 August 2010.

*Attorney General Roy Cooper, by Assistant Attorney General Diane Martin Pomper, for the State.*

*Peter Wood for defendant-appellant.*

BRYANT, Judge.

Defendant Maurice Williamson appeals from judgments entered upon revocation of probation. For the reasons discussed below, we affirm, but remand for correction of a clerical error.

On 14 November 2008, defendant pled guilty in Guilford County to breaking and entering, obtaining property by false pretenses, possession of burglary tools, and misdemeanor injury to real property. Judge John O. Craig, III, sentenced defendant to 15 to 18 months imprisonment for the breaking and/or entering conviction, and 15 to 18 months imprisonment for the obtaining property by false pretense, possession of burglary tools, and misdemeanor

injury to real property convictions, to be served consecutively. Judge Craig suspended the sentences and placed defendant on 36 months supervised probation. Regular conditions of defendant's probation included: (1) remain within the jurisdiction of the Court unless granted written permission to leave by the Court or probation officer; (2) report as directed to his probation officer; and (3) notify probation officer of any change in address or employment.

In March 2009, defendant's probation officer, Malcolm Farrell, filed a probation violation report in each case alleging that defendant had violated his probation by: (1) failing to pay his monetary obligations; and (2) leaving his place of residence and failing to make his whereabouts known. After holding a hearing, Judge Craig found defendant had willfully violated the conditions of his probation. For each case, Judge Craig signed an "Order on Violation of Probation or on Motion to Modify" in which Judge Craig found that defendant had violated the conditions of his probation as set forth in "paragraph(s) 1,2 in the Violation Report or Notice of Hearing dated 02/23/2009." Judge Craig ordered the original judgment "remain in full force and effect," but modified the original judgment by ordering defendant to serve a 45-day split sentence and by extending defendant's term of probation for six months.

On 1 May 2009, defendant's probation officer filed probation violation reports in each case alleging that defendant had violated the regular condition of his probation that he "remain within the

jurisdiction of the Court unless granted written permission to leave by the Court or the probation officer" in that:

on or about 4/25/09 the probationer left his place of residence at NC HWY 65 Wentworth, NC, failed to make his whereabouts known to his probation officer and has not been located within the Court's jurisdiction without any reasonable efforts. The probationer was under a \$335,000 secured bond for multiple felony charges and was under active probation at the time of his escape.

The matter came on for hearing before Judge Ripley E. Rand on 4 August 2009. Defendant, through his counsel, denied the violation of probation. Officer Farrell testified that defendant had been under his supervision since 14 November 2008 when defendant was placed on probation in Guilford County. Officer Farrell further testified that he informed defendant of the conditions of his probation on 12 December 2008, and that defendant signed and acknowledged that he understood the terms of probation. Officer Farrell next testified that while defendant was serving his 45-day split sentence pursuant to the modified judgment, defendant escaped. Specifically, defendant escaped from the Rockingham Jail on 25 April 2009, "was picked up in Guilford County and brought back" on 28 April 2009, and charged with felony escape. On cross-examination, Officer Farrell acknowledged that defendant was not scheduled to report to him during the 3-day escape; however, the officer "doubt[ed] he would've contacted me while he was running from the law." Officer Farrell further testified on cross-examination that during defendant's three-day escape, he checked

defendant's residence and spoke with defendant's mother who "had no idea where he was."

Defendant testified that he was not required to report to his probation officer between 25 April and 28 April 2008, and that he was not required to be at his residence during those dates. Defendant also testified that he "never received a statement stating what my new conditions were for probation" after his judgment was modified. On cross-examination, defendant acknowledged that he was not required to report to his probation officer during the three days because he was supposed to be in jail. Defendant further admitted that his probation officer was not able to find him during the three-day period.

After hearing the testimony, Judge Rand found that defendant willfully violated "the condition as set forth in the violation report." By judgments entered 4 August 2009, the trial court found defendant had violated the conditions of his probation as set forth in "paragraph(s) 1,2 in the Violation Report or Notice of Hearing dated 02-23-2009." Defendant's probation was revoked and his suspended sentences were activated. Defendant appeals.

Defendant contends the trial court abused its discretion in revoking his probation and activating his sentence because there was insufficient evidence that he willfully violated the terms of his probation. To support his contention, defendant points to his testimony that he was not under a duty to report to his probation officer or be in his residence during his 3-day escape, and that he

was unaware of his probation terms after his probation was modified.

It is well settled that "probation or suspension of sentence comes as an act of grace to one convicted of, or pleading guilty to, a crime.'" *State v. Tennant*, 141 N.C. App. 524, 526, 540 S.E.2d 807, 808 (2000) (quoting *State v. Duncan*, 270 N.C. 241, 245, 154 S.E.2d 53, 57 (1967)). In order to revoke a defendant's probation, the evidence need only "reasonably satisfy the [trial court] in the exercise of [its] 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. Hewett*, 270 N.C. 348, 353, 154 S.E.2d 476, 480 (1967). The breach of any one condition of probation is sufficient grounds to revoke a defendant's probation. *State v. Seay*, 59 N.C. App. 667, 670-71, 298 S.E.2d 53, 55 (1982), *disc. review denied*, 307 N.C. 701, 301 S.E.2d 394 (1983). A verified probation violation report is competent evidence that a violation occurred. *State v. Duncan*, 270 N.C. 241, 246, 154 S.E.2d 53, 58 (1967). A defendant has the burden of presenting competent evidence demonstrating an inability to comply with the terms of probation. *State v. Tozzi*, 84 N.C. App. 517, 521, 353 S.E.2d 250, 253 (1987). "[E]vidence of [a] defendant's failure to comply may justify a finding that [a] defendant's failure to comply was wilful or without lawful excuse." *Id.* A trial court's judgment revoking a defendant's probation will only

be disturbed upon a showing of a manifest abuse of discretion. *State v. Guffey*, 253 N.C. 43, 45, 116 S.E.2d 148, 150 (1960).

We conclude the State presented sufficient evidence to show that defendant willfully violated a condition of his probation without lawful excuse. Here, it was alleged that defendant violated his probation by not "remain[ing] within the jurisdiction of the Court unless granted written permission to leave by the Court or the probation officer." Testimony at the hearing reflects that defendant was serving a 45-day sentence in the Rockingham County Jail when he escaped on 25 April 2009; that defendant was under active probation at the time of his escape; that defendant was re-arrested on 28 April 2009; and that during the 3-day escape, defendant did not make his whereabouts known to his probation officer. Further, defendant admitted that during the three-day period he was not in jail and his probation officer was unable to find him. Finally, contrary to defendant's assertion, Officer Farrell advised defendant of the regular conditions of his probation, which remained in effect after defendant's modification. The defendant has the burden of showing excuse or lack of willfulness; otherwise, evidence of failure to comply is sufficient to support a finding that the violation was willful or without lawful excuse. *State v. Crouch*, 74 N.C. App. 565, 567, 328 S.E.2d 833, 835 (1985). We hold that there is evidence in the record to support the judge's findings that defendant willfully and without lawful excuse did not remain within the Court's jurisdiction when he escaped from jail. We further hold that it was within the trial

court's discretion to revoke defendant's probation and activate his sentence. *See Seay*, 59 N.C. App. at 670-71, 298 S.E.2d at 55 (1982) (breach of any one condition is sufficient grounds to revoke probation).

We note that in the written judgments revoking defendant's probation, the trial court referenced the alleged violations in "paragraph(s) 1, 2 in the Violation Report or Notice of Hearing dated 02-23-2009[,] " rather than paragraph 1 in the Violation Report dated and filed 1 May 2009. This is due to a clerical error, as the referenced violations are the same violations set out in the 7 April 2009 orders, in which Judge Craig found defendant violated his probation and modified defendant's original judgment. Therefore, we remand this matter for the correction of the clerical error to show that defendant violated paragraph one in the violation report filed 1 May 2009. *See State v. Jarman*, 140 N.C. App. 198, 202, 535 S.E.2d 875, 878 (2000) (defining clerical error as "[a]n error resulting from a minor mistake or inadvertence, esp. in writing or copying something on the record, and not from judicial reasoning or determination"); *see also State v. Smith*, 188 N.C. App. 842, 845, 656 S.E.2d 695, 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.'"). Accordingly, we affirm the judgments of the trial court revoking defendant's probation and activating his suspended sentence, but remand for correction of the clerical error.

Affirmed and remanded in part for correction of the judgments  
revoking probation.

Judges HUNTER, Robert C., and STEELMAN concur.

Report per Rule 30(e).