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NO. COA11-610
NORTH CAROLINA COURT OF APPEALS

Filed: 20 December 2011

STATE OF NORTH CAROLINA

v.

Gaston County
Nos. 07 CRS 20169, 20171

YAKOTUS DIABLO ODUM

Appeal by defendant from judgment entered 2 February 2011 by Judge Timothy S. Kincaid in Gaston County Superior Court. Heard in the Court of Appeals 28 November 2011.

Attorney General Roy Cooper, by Assistant Attorney General Bethany A. Burgon, for the State.

John T. Hall for defendant.

ELMORE, Judge.

Yakotus Diablo Odum (defendant) appeals from the trial court's judgment revoking his probation. Defendant contends that the trial court 1) abused its discretion in finding that he willfully violated the monetary conditions of his probation, and 2) erred by finding six probation violations in its written judgment after finding only two violations in open court. We affirm, but remand for correction of a clerical error.

On 29 July 2008, defendant pled guilty to two counts of conspiracy to commit robbery with a dangerous weapon. The trial court imposed a term of twenty-nine to forty-four months imprisonment, suspended the sentence, and placed defendant on thirty-six months of supervised probation. Defendant's probation was modified in September of 2009 and January of 2010 to impose more restrictive conditions.

On 17 September 2010, defendant's probation officer filed a violation report alleging six violations, including two monetary violations. The matter came on for a probation violation hearing on 2 February 2011. At the start of the hearing, defendant admitted, through counsel, to some curfew violations and the two monetary violations. Defendant testified that he was behind on his monetary obligations, but claimed that a relative could pay \$300.00 toward his arrearage. Defendant, however, did not offer any evidence of an excuse for his failure to satisfy the monetary obligations of his probation.

After hearing the evidence, the trial court made oral findings of the two violations of monetary conditions. The trial court further found that "[the defendant] has not offered any excuse or justification for being behind [on his monetary obligations]. He does have a relative that has the ability to

pay a portion of the arrears today." The trial court revoked defendant's probation and activated the suspended sentence based on the two violations. The trial court's written judgment, however, indicates that it found all six of the violations alleged in the violation report. Defendant gave notice of appeal.

On appeal, defendant's first argument is that the trial court abused its discretion by finding that he willfully violated the monetary conditions of his probation. We disagree.

Because probation is "an act of grace by the State to one convicted of a crime[,] . . . an alleged violation of a probationary condition need not be proven beyond a reasonable doubt." *State v. Hill*, 132 N.C. App. 209, 211, 510 S.E.2d 413, 414 (1999) (citation and internal quotation marks omitted). "All that is required is that the evidence be sufficient to reasonably satisfy the judge in the exercise of his sound discretion that the defendant has willfully violated a valid condition of probation." *State v. White*, 129 N.C. App. 52, 58, 496 S.E.2d 842, 846 (1998), *aff'd in part, disc. review improvidently allowed in part*, 350 N.C. 302, 512 S.E.2d 424 (1999). "Any violation of a valid condition of probation is

sufficient to revoke [a] defendant's probation." *State v. Tozzi*, 84 N.C. App. 517, 521, 353 S.E.2d 250, 253 (1987).

"The trial judge has a duty, when the defendant does offer evidence of his ability or inability to make the money payments required [as a condition of probation], to make findings of fact which clearly show that he did consider and did evaluate the defendant's evidence." *State v. Williamson*, 61 N.C. App. 531, 535, 301 S.E.2d 423, 426 (1983) (citation omitted). "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).

In this case, defendant admitted that he had failed to satisfy the monetary conditions of his probation, and offered no excuse as to why he was unable to make the required payments. To the extent that defendant's offer to have a relative make a payment constituted an excuse, the trial court made findings demonstrating that it considered defendant's evidence, and that defendant has failed to demonstrate an abuse of discretion. Accordingly, we conclude that defendant's argument lacks merit.

In defendant's remaining argument, he contends that the trial court's written judgment does not match its oral findings

regarding the probation violations. We agree, and conclude that this discrepancy constitutes a clerical error.

“‘Clerical error’ has been defined . . . [a]s: ‘an error resulting from a minor mistake or inadvertence, esp. in writing or copying something on the record, and not from judicial reasoning or determination’”. *State v. Jarman*, 140 N.C. App. 198, 202, 535 S.E.2d 875, 878 (2000) (quoting *Black’s Law Dictionary* 563 (7th ed. 1999)). “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.’” *State v. Smith*, 188 N.C. App. 842, 845, 656 S.E.2d 695, 696 (2008) (citations omitted).

At the probation revocation hearing, the trial court found defendant had committed two of the six alleged probation violations. In its written judgment, however, it found all six of the alleged violations. From the record, it appears that this variance was a mistake in recording the trial court’s oral findings, rather than the result of a second judicial determination. Furthermore, given the fact that any one of the six alleged violations provided sufficient cause for the trial court to revoke defendant’s probation, defendant cannot

demonstrate any prejudice from the apparent clerical error. Accordingly, we remand the matter to the superior court for correction of the clerical error, so that the judgment may accurately reflect the trial court's findings.

Affirmed; remanded for correction of a clerical error.

Judges McGEE and McCULLOUGH concur.

Report per Rule 30(e).