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NO. COA12-550  
NORTH CAROLINA COURT OF APPEALS

Filed: 4 December 2012

STATE OF NORTH CAROLINA

v.

Cleveland County  
Nos. 10 CRS 893-94

BOBBY RAY BRACKETT

Appeal by defendant from judgments entered 1 December 2011 by Judge James W. Morgan in Cleveland County Superior Court. Heard in the Court of Appeals 26 November 2012.

*Attorney General Roy Cooper, by Special Deputy Attorney General Angel E. Gray, for the State.*

*Rudolf Widenhouse & Fialko, by M. Gordon Widenhouse, Jr., for defendant-appellant.*

HUNTER, Robert C., Judge.

Defendant Bobby Ray Brackett appeals from the judgments revoking his probation. Defendant contends the trial court failed to make sufficient findings of fact to demonstrate it considered his excuse that he did not willfully violate his probation. We affirm the judgments but remand for correction of clerical errors.

On 1 March 2011, defendant pled guilty to two counts of indecent liberties with a child. Defendant was placed on probation, but was sentenced to consecutive split-sentences of five months imprisonment. Defendant was also required to comply with all the conditions of the sex offender control program, including not possessing "any sexually stimulating or sexually oriented materials" or any "children's videos." Defendant signed acknowledgements of the conditions of his probation at the time of his plea and at the time he was released from prison in October of 2011.

On 1 November 2011, defendant's probation officer filed violation reports alleging defendant possessed pornographic videos and children's videos. At the probation revocation hearing, defendant testified he was not aware the prohibited materials were in his home. The trial court found "[b]ased on the evidence presented . . . the defendant had willfully violated the terms of his probation as outlined in the violation report." The trial court revoked defendant's probation and activated the suspended sentences. Defendant filed written notice of appeal.

Defendant's sole argument on appeal is that the trial court failed to make sufficient findings of fact addressing his claim that he did not willfully violate 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). Although a trial court is required to make findings of fact showing it considered the evidence presented at a probation revocation hearing, it is not required to make findings addressing each excuse for non-compliance presented by the defendant. *State v. Belcher*, 173 N.C. App. 620, 624-25, 619 S.E.2d 567, 570 (2005) (citation omitted).

In this case, the trial court's oral findings of fact are sufficient to support the revocation of defendant's probation.

Defendant does not dispute the evidence that the prohibited items were found in his home. In open court, the trial court announced it had considered the evidence and determined defendant had willfully violated his probation. Although the trial court's finding does not specifically address defendant's claim he was not aware the prohibited items were in his home, it sufficiently demonstrates the trial court considered the evidence presented and exercised its discretion by rejecting defendant's excuse for his violations. Accordingly, we affirm the trial court's judgments revoking defendant's probation.

In addition, we note that the trial court made an apparent clerical error on the written judgments. "'Clerical error' has been defined . . . 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.'" *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).

Defendant denied the probation violations were willful, and at the conclusion of the probation hearing the trial court orally found defendant had willfully violated his probation based on the evidence presented. In the written judgments, however, the trial court checked the boxes indicating defendant had admitted to violating his probation. Thus, the judgments do not accurately reflect the trial court's oral findings at that hearing. 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 judicial determination and constitutes clerical error. Accordingly, we remand the judgments for correction of the clerical errors.

Affirmed; remanded for correction of clerical errors.

Judges CALABRIA and McCULLOUGH concur.

Report per Rule 30(e).