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NO. COA14-535
NORTH CAROLINA COURT OF APPEALS

Filed: 18 November 2014

STATE OF NORTH CAROLINA

v.

ROBERT THOMAS PERSING, JR.,
Defendant.

Moore County

Nos. 11 CRS 50844-45

11 CRS 50850, 50865-66

11 CRS 50871, 50873

11 CRS 50875-76

Appeal by defendant from judgments entered 11 December 2013 by Judge James M. Webb in Moore County Superior Court. Heard in the Court of Appeals 20 October 2014.

Attorney General Roy Cooper, by Assistant Attorney General Gaines M. Weaver, for the State.

Bryan Gates for defendant-appellant.

GEER, Judge.

Defendant Robert Thomas Persing, Jr. appeals from judgments entered upon the revocation of his probation. On appeal, defendant argues that the trial court's finding that he committed the offense of felony larceny while on probation was not supported by the evidence. Although defendant argues that he believed the property he took was abandoned, that issue was a question for the trial court to decide. Because the evidence

before the trial court was sufficient to support its finding that defendant committed a new offense on probation, we affirm.

Facts

On 7 January 2013, defendant entered a guilty plea to 10 counts of felony larceny. The trial court consolidated nine of defendant's convictions into four judgments and sentenced defendant to four consecutive sentences of six to eight months imprisonment, but suspended each sentence and placed defendant on probation for 60 months.¹ The court also ordered defendant to pay restitution in each judgment, totaling \$8,825.00.

On 28 August 2013, defendant's probation officer filed violation reports for each of defendant's sentences. In each violation report, the officer alleged that defendant was in arrears with respect to his payment of court-ordered restitution and fees and had committed a new criminal offense of felony larceny, that was still pending in Moore County Superior Court. Defendant had allegedly taken scrap metal from a dumpster belonging to and on the premises of Sunbelt Mechanical, L.L.C.

After a hearing on 9 and 10 December 2013, the trial court entered judgments revoking defendant's probation based on its finding that defendant had committed a new criminal offense, and

¹The trial court's disposition of defendant's 10th conviction for felony larceny in file number 11 CRS 50902 is not included in the record on appeal and is not part of the subsequent probation revocation proceedings.

activated defendant's four consecutive sentences. Defendant timely appealed to this Court.

Discussion

Defendant first argues that the trial court erred in revoking his probation based on its finding that he had committed a new offense of felony larceny. "'[P]robation is an act of grace by the State to one convicted of a crime'" and thus "a proceeding to revoke probation is not bound by strict rules of evidence and 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) (quoting *State v. Freeman*, 47 N.C. App. 171, 175, 266 S.E.2d 723, 725 (1980)). Instead, "'all that is required . . . is that the evidence be such as to reasonably satisfy the judge in the exercise of his sound discretion that the defendant has violated a valid condition upon which the sentence was suspended.'" *Id.* (emphasis added) (quoting *State v. Robinson*, 248 N.C. 282, 285-86, 103 S.E.2d 376, 379 (1958)).

For probation violations occurring on or after 1 December 2011, a trial court may only revoke probation where the defendant: "(1) commits a new crime in violation of N.C. Gen. Stat. § 15A-1343(b)(1); (2) absconds supervision in violation of N.C. Gen. Stat. § 15A-1343(b)(3a); or (3) violates any condition

of probation after serving two prior periods of [confinement resulting from violations] under N.C. Gen. Stat. § 15A-1344(d2)." *State v. Nolen*, ___ N.C. App. ___, ___, 743 S.E.2d 729, 730 (2013) (citing N.C. Gen. Stat. § 15A-1344(a) (2011)). When a defendant serving probation has been charged with, but not yet convicted of, committing a new crime, a trial court may revoke the defendant's probation when it independently finds the defendant committed a new crime. *See, e.g., State v. Monroe*, 83 N.C. App. 143, 145-46, 349 S.E.2d 315, 317 (1986); *State v. Debnam*, 23 N.C. App. 478, 480-81, 209 S.E.2d 409, 410-11 (1974).

Here, the trial court found, after the presentation of evidence by both the State and rebuttal evidence by defendant, that defendant violated the terms of his probation by committing a new crime: larceny. The elements of larceny are "(1) taking the property of another; (2) carrying it away; (3) without the owner's consent; and (4) with the intent to deprive the owner of the property permanently." *State v. Wilson*, 154 N.C. App. 686, 690, 573 S.E.2d 193, 196 (2002); N.C. Gen. Stat. § 14-72 (2013).

The State presented evidence from defendant's probation officer and Detective Bobby Roger of the Aberdeen Police Department that defendant took scrap metal from a dumpster on the premises of Sunbelt Mechanical. Sunbelt Mechanical collected scrap metal from its operations in the dumpster for

later recycling and had not given defendant permission to take the scrap metal. Defendant admitted that he took the scrap metal, which he then sold to a scrap yard.

Defendant, however, testified that he thought the scrap metal had been thrown away because it was in a dumpster. The trial court was entitled to discount defendant's testimony that he thought the scrap metal was abandoned, and based on the State's evidence, we cannot say the trial court abused its discretion in concluding that defendant had committed a new crime or larceny and violated his probation. *See Robinson*, 248 N.C. at 286, 103 S.E.2d at 379 ("In determining whether the evidence warrants the revocation of a suspended sentence, the credibility of the witnesses and the evaluation and weight of their testimony, are for the judge.").

Because the trial court's revocation of defendant's probation is fully supported by its finding that defendant committed a new crime, we need not address defendant's second argument regarding the court's findings that he violated his probation by failing to pay court-ordered fees and restitution. *See State v. Belcher*, 173 N.C. App. 620, 625, 619 S.E.2d 567, 570 (2005). Accordingly, we affirm the trial court's judgments revoking defendant's probation.

Affirmed.

Judges CALABRIA and McCULLOUGH concur.

Report per Rule 30(e).