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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA15-528

Filed: 17 November 2015

Hoke County, Nos. 07 CRS 53404-05, 09 CRS 50645-48, 10 CRS 514

STATE OF NORTH CAROLINA

v.

LEROY MCLAUGHLIN

Appeal by Defendant from judgments entered 19 September 2014 by Judge Richard T. Brown in Hoke County Superior Court. Heard in the Court of Appeals 2 November 2015.

Attorney General Roy Cooper, by Assistant Attorney General Candace A. Hoffman, for the State.

Willis Johnson & Nelson PLLC, by Drew Nelson, for defendant-appellant.

HUNTER, JR, Robert N., Judge.

Leroy McLaughlin (“Defendant”) appeals from the Hoke County Superior Court’s judgments revoking his probation and activating his suspended sentences. We reverse the judgments and remand for further proceedings.

On 20 November 2008, Defendant pled guilty to second degree burglary and felony larceny. The trial court imposed a concurrent sentence for 16–20 months’ imprisonment and 10–12 months’ imprisonment, and suspended the sentence for 36

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months of supervised probation instead. On 9 December 2011, the trial court extended Defendant's probation for an additional 36 months.

On 8 December 2011, Defendant pled guilty to two counts of possession with intent to sell or deliver cocaine, one count of felony possession of cocaine, and four other drug-related charges. The trial court sentenced Defendant to 11–14 months' imprisonment, and suspended the sentence for 36 months of supervised probation instead. The trial court ordered Defendant to serve this sentence at the expiration of his 2008 sentences for burglary and larceny.

On 19 September 2012, Defendant's probation officer filed a violation report alleging that Defendant: (1) tested positive for opiates; (2) missed several scheduled appointments; (3) failed to pay his court fees; (4) failed to pay his probation supervision fees; and (5) failed to make his whereabouts known to his probation officer, traveled to an area outside the trial court's jurisdiction, and therefore absconded supervision. On 19 September 2014, following a hearing, the trial court found that Defendant violated the conditions of his probation, and therefore revoked Defendant's probation and activated his three suspended sentences. Defendant appeals.

Defendant argues, and the State concedes, that the trial court erred in revoking his probation because it did not have statutory authority to revoke based on the alleged violations. We agree.

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The Justice Reinvestment Act of 2011 (“JRA”) placed certain limits on a trial court’s authority to revoke probation. For probation violations occurring on or after 1 December 2011, a trial court may revoke probation only where a defendant: (1) commits a new crime in violation of N.C. Gen. Stat. § 15A-1343(b)(1) (2013); (2) absconds supervision in violation of N.C. Gen. Stat. § 15A-1343(b)(3a) (2013); or (3) violates any condition of probation after serving two prior periods of confinement in response to violation (“CRV”) under N.C. Gen. Stat. § 15A-1344(d2) (2013). N.C. Gen. Stat. § 15A-1344(a) (2013). For all other probation violations, a trial court has authority to alter the conditions of probation or impose a period of CRV, but it does not have authority to revoke probation. N.C. Gen. Stat. §§ 15A-1344(a), (d2).

In addition to limiting a trial court’s revoking authority, “the JRA made the following a regular condition of probation: ‘Not to abscond, by willfully avoiding supervision or by willfully making the defendant’s whereabouts unknown to the supervising probation officer.’” *State v. Hunnicutt*, ___ N.C. App. ___, ___, 740 S.E.2d 906, 910 (2013) (quoting N.C. Gen. Stat. § 15A-1343(b)(3a)). Although the JRA’s limited revoking authority applies to violations occurring on or after 1 December 2011, the new absconding condition applies only to offenses committed on or after 1 December 2011. *Id.* at ___, 740 S.E.2d at 911 (citing 2011 N.C. Sess. Laws 412, sec. 2.5).

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Here, the trial court concluded that it had authority to revoke Defendant's probation based on "the willful violation of the condition(s) that he[] not commit any criminal offense, G.S. 15A-1344(d2), or abscond from supervision, G.S. 15A-1343(b)(3a)." However, the trial court lacked authority to revoke on either basis. The State has not alleged that Defendant committed a new criminal offense. We also note that Defendant committed the underlying offenses in 2007 and 2009. Therefore, Defendant was not yet subject to the new absconding condition added by the JRA, even though his probation officer used the term "absconded" in her violation report. *See State v. Nolen*, ___ N.C. App. ___, ___, 743 S.E.2d 729, 731 (2013). Furthermore, it appears that Defendant had not served two prior periods of CRV. While the trial court found that Defendant had violated four other conditions of probation, the JRA does not authorize revocation based on any of them. Therefore, the trial court did not have authority to revoke Defendant's probation.

Accordingly, we reverse the judgments revoking Defendant's probation, and remand the case to the trial court to enter of appropriate judgments for Defendant's violations consistent with N.C. Gen. Stat. § 15A-1344. In light of our disposition, we need not address Defendant's remaining arguments.

REVERSED AND REMANDED.

Chief Judge McGee and Judge Dillon concur.

Report per Rule 30(e).