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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA15-1245

Filed: 16 August 2016

Wayne County, No. 13 CRS 53715

STATE OF NORTH CAROLINA

v.

CORNELL PERRY ASHFORD, Defendant.

Appeal by defendant from judgment entered 1 June 2015 by Judge Arnold O. Jones II in Wayne County Superior Court. Heard in the Court of Appeals 1 August 2016.

Attorney General Roy Cooper, by Assistant Attorney General Justin M. Hampton, for the State.

Mary McCullers Reece for defendant-appellant.

ELMORE, Judge.

Cornell Perry Ashford (defendant) appeals from a judgment entered upon revocation of his probation. We affirm and remand for correction of a clerical error.

On 14 July 2014, defendant pled guilty to conspiracy to commit armed robbery. The trial court sentenced defendant to a term of 18 to 34 months of imprisonment, suspended the sentence, and placed defendant on 24 months of supervised probation.

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On 22 January 2015, defendant's probation officer filed a violation report alleging defendant willfully violated the conditions of his probation by absconding and being in arrears on his court debt. A probation violation hearing was held on 1 June 2015 in Wayne County Superior Court. Defendant admitted to being in arrears on his court debt, but denied that he absconded. After a hearing, the trial court found defendant violated the conditions of his probation as alleged in the violation report and revoked his probation. Defendant gave oral notice of appeal.

Defendant first contends the trial court abused its discretion in revoking his probation because the trial court's finding that defendant violated his probation by absconding was not supported by competent evidence. For the reasons discussed below, we do not agree.

At a hearing to revoke a defendant's probation, the evidence need only "be such as to reasonably satisfy the judge in the exercise of his 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. Young*, 190 N.C. App. 458, 459, 660 S.E.2d 574, 576 (2008). "The judge's finding of such a violation, if supported by competent evidence, will not be overturned absent a showing of manifest abuse of discretion." *Id.*

Here, Probation Officer Bobby Game testified at the hearing that he was first assigned to defendant's case on 5 December 2014, and had his first office visit with

defendant on 9 December 2014. Officer Game further testified that the next office visit was scheduled for 6 January 2015, but defendant did not show. Officer Game visited defendant's listed home address on 15 and 16 January, but defendant was not at the house. On 20 January 2015, Officer Game started defendant's absconder package. Before being served with the probation violation report on 17 March 2015, defendant phoned Officer Game and informed him he was going to turn himself in, but defendant never did. While on the phone, defendant refused to provide Officer Game with a phone number or address in order for Officer Game to contact him. Defendant does not dispute this testimony and it is competent evidence to support the trial court's finding that defendant willfully violated the conditions of his probation by absconding.

Defendant contends, however, that the trial court abused its discretion in revoking his probation because it found he avoided supervision before his probationary sentence began. The probation violation report filed 27 January 2015 alleged that defendant willfully violated the conditions of his probation by "avoiding supervision since *on or before January 6, 2014* and has not made his self [sic] available for home contacts or office management contacts, thus rendering him an absconder." Defendant's probation, however, did not begin until July 2014. After the hearing, the trial court entered a judgment revoking defendant's probation finding that defendant violated the conditions of his probation as alleged in the

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violation report. Thus, defendant argues the trial court based its revocation on a finding that defendant avoided supervision during a time he was not on probation.

A review of the transcript and record, however, shows that the year alleged in the violation report is a clerical error in that it should read: “6 January 2015.” “A clerical error is an error resulting from a minor mistake or inadvertence, especially in writing or copying something on the record, and not from judicial reasoning or determination.” *State v. Lark*, 198 N.C. App. 82, 95, 678 S.E.2d 693, 702 (2009) (internal quotation marks, brackets, and citations omitted), *disc. review denied*, 363 N.C. 808, 692 S.E.2d 111 (2010).

Defendant argues the incorrect date cannot be a clerical error because there is no indication the trial court was aware defendant had not begun probation in January 2014. However, Officer Game’s undisputed testimony shows he was first assigned to defendant’s case in December 2014 and that defendant failed to show for his scheduled meeting on 6 January 2015. The probation violation report also identifies the underlying judgment as the 14 July 2014 judgment placing defendant on probation. Additionally, the trial court was aware defendant’s probation did not begin until July 2014 because the same trial judge presided over both the probation violation hearing and the initial hearing placing defendant on probation. To be sure, immediately after finding defendant avoided supervision, the trial court referenced the July 2014 judgment placing defendant on probation stating, “Make all monies

that were ordered by me on July 14, 2014, a civil judgment.” Thus, the trial court clearly understood defendant’s probationary sentence began 14 July 2014, and the incorrect year alleged in the violation report is a clerical error. Because the State presented competent evidence defendant willfully violated the conditions of his probation by avoiding supervision on or after 6 January 2015, the trial court did not abuse its discretion in revoking defendant’s probation.

However, the court’s judgment revoking probation incorporates both paragraphs of the violation report by reference, including the error regarding the date of the first violation. Accordingly, we must remand the judgment to the trial court to correct the clerical error in the date of the violation, found by the court, based upon the first paragraph in the report. *See State v. Smith*, 188 N.C. App. 842, 845, 656 S.E.2d 685, 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.” (internal quotation marks omitted)).

Defendant next contends that he was denied his constitutional right to effective assistance of counsel when his trial counsel failed to object to the court’s consideration of a violation alleged to have occurred before the probationary sentence was imposed. We disagree.

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“To prevail on a claim of ineffective assistance of counsel, a defendant must first show that his counsel’s performance was deficient and then that counsel’s deficient performance prejudiced his defense.” *State v. Allen*, 360 N.C. 297, 316, 626 S.E.2d 271, 286 (citing *Strickland v. Washington*, 466 U.S. 668, 687, 80 L. Ed. 2d 674, 693 (1984)), *cert. denied*, 549 U.S. 867, 166 L. Ed. 2d 116 (2006).

Defendant contends his counsel was ineffective because there was no strategic reason to allow the court to consider the allegation that defendant avoided supervision before his probationary sentence began. However, as we concluded above, the incorrect year alleged in the probation violation report was a clerical error. Therefore, defendant’s argument is meritless.

Accordingly, we affirm the judgment revoking defendant’s probation, but remand to the trial court for correction of the clerical error.

AFFIRMED AND REMANDED FOR CORRECTION OF CLERICAL ERROR.

Judges DAVIS and DIETZ concur.

Report per Rule 30(e).