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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA15-1386

Filed: 5 July 2016

Nash County, No. 15CRS637

STATE OF NORTH CAROLINA

v.

TIMOTHY MAURICE PETWAY

Appeal by defendant from judgment entered 3 June 2015 by Judge Quentin T. Sumner in Nash County Superior Court. Heard in the Court of Appeals 10 May 2016.

Attorney General Roy Cooper, by Assistant Attorney General Carole Biggers, for the State.

Kimberly P. Hoppin, for defendant.

DIETZ, Judge.

Timothy Petway appeals the trial court's revocation of his probation for absconding. Petway argues that the trial court abused its discretion by concluding that he was "willfully avoiding supervision by making his whereabouts unknown to his supervising officer."

The trial court's determination was not an abuse of discretion. When Petway's probation officer visited the home address in his probation file, Petway's girlfriend answered the door and told the officer that Petway did not live there and that she did

not know where he was. Petway later called the officer from his cellphone, and the officer instructed Petway to turn himself in. The officer warned Petway that he would be deemed an absconder if he did not. Petway did not turn himself in. Petway's job involved repossessing cars, and he did not have a fixed work location, meaning Petway's probation officer had no way to physically locate Petway during the day. In light of these facts, the trial court was well within its sound discretion in determining that Petway had absconded. Accordingly, we affirm the trial court's judgment.

Facts and Procedural History

Timothy Petway was indicted for felony possession of cocaine, driving while impaired, and driving with a revoked license. On 20 February 2014, Petway pleaded guilty to driving while impaired in exchange for the dismissal of the other charges against him. The trial court sentenced Petway to two years in prison but suspended the sentence and placed him on supervised probation for 36 months.

Petway was supervised by Officer Adam Becker, who routinely checked in with Petway through office appointments and visits to Petway's home and workplace. On 6 April 2015, Officer Becker went to the home address Petway provided to the probation office in order to serve him with probation violation papers for a series of unrelated probation violations. Petway's girlfriend answered the door and told Officer Becker that Petway did not live there, that she did not know where he was, and that she did not want the probation officer to return to her home.

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Approximately one minute later, Petway called Officer Becker from his cellphone and explained that he was out “reposing cars.” Petway repossessed cars as part of his job, which meant he did not work in a fixed location during the day. Officer Becker instructed Petway to turn himself in or he would be considered an absconder. The following day, Petway still had not turned himself in or provided Officer Becker with any updated contact information. Officer Becker filed an addendum to the original violation report alleging that Petway had absconded by “willfully avoiding supervision by making his whereabouts unknown to his supervising officer.” A week passed with Officer Becker having no means of locating Petway. Finally, on 13 April 2015, Petway turned himself in.

On 3 June 2015, the trial court held a probation violation hearing. Petway admitted to violating the conditions of his probation but denied absconding. The trial court entered judgment finding that Petway absconded and then revoked his probation and activated his sentence. Petway timely appealed.

Analysis

On appeal, Petway argues that the trial court erred in activating his sentence for absconding because, even if Petway was not living at the address he provided to the probation office, Officer Becker knew how to contact Petway. Thus, Petway

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argues, his whereabouts were never unknown to the officer. As explained below, we reject Petway's argument and affirm.

In 2011, the General Assembly passed the Justice Reinvestment Act, which limits the trial court's discretion to revoke a defendant's probation. For probation violations occurring on or after 1 December 2011, a trial court may only revoke probation in limited circumstances, including where the defendant absconds from supervision in violation of N.C. Gen. Stat. § 15A-1343(b)(3a). *See* N.C. Gen. Stat. § 15A-1344(a). Absconding is a defined term in the probation statutes and means "avoiding supervision" or "making a defendant's whereabouts unknown to the supervising probation officer." *Id.* § 15A-1343(b)(3a). This Court reviews a trial court's determination that a defendant willfully absconded from supervision for abuse of discretion. *State v. Jones*, __ N.C. App. __, __, 736 S.E.2d 634, 636 (2013).

Here, the trial court determined that Petway "willfully avoid[ed] supervision by making his whereabouts unknown to his supervising officer." This determination was well within the trial court's sound discretion. First, Officer Becker testified that he went to Petway's last known address and Petway was not there. Second, Petway's girlfriend told Officer Becker that Petway did not live there, that she did not know where Petway was, and that she did not want the probation officer to return to her home again. Third, when Petway called Officer Becker from his cellphone, Officer Becker instructed Petway that he needed to immediately turn himself in or he would

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be considered an absconder, but Petway did not do so. Between 7 April 2015 and 13 April 2015, the date Petway finally turned himself in, Officer Becker had no way to locate Petway and was unable to supervise him. Finally, Petway had a job “repoing cars” that meant he could not be located during the day at any particular place of employment. Based on these facts, the trial court did not abuse its discretion when it determined that Petway “willfully avoid[ed] supervision by making his whereabouts unknown to his supervising officer.” Accordingly, we affirm the trial court’s judgment.

Conclusion

We affirm the trial court’s judgment.

AFFIRMED.

Judges BRYANT and STROUD concur.

Report per Rule 30(e).