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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-434

Filed: 6 December 2016

Cabarrus County, Nos. 13 CRS 54969, 54970

STATE OF NORTH CAROLINA

v.

LEANDER VINCENT WATKINS, JR.

Appeal by defendant from judgments entered 3 December 2015 by Judge Kevin M. Bridges in Cabarrus County Superior Court. Heard in the Court of Appeals 1 November 2016.

Attorney General Roy Cooper, by Assistant Attorney General Heather Haney, for the State.

Andrew K. Yu, for defendant-appellant.

CALABRIA, Judge.

Leander Vincent Watkins, Jr. (“defendant”) appeals from judgments revoking his probation and activating his suspended sentences. After careful review, we affirm.

I. Background

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On 12 September 2014, defendant pleaded guilty to one count each of possession of a firearm by a felon and possession with intent to sell or deliver marijuana. For the unlawful possession of a firearm, the trial court sentenced defendant to 17 to 30 months in the custody of the North Carolina Division of Adult Correction (“DAC”), followed by a consecutive term of 6 to 17 months for the marijuana offense. The court suspended defendant’s sentences and ordered him to serve 36 months of supervised probation.

On 27 January 2015, reports were filed in both cases alleging that defendant had willfully violated the terms of his probation by failing to: (1) report for scheduled visits with his supervising officer on 24, 25, 29, and 30 September 2014 and 5 and 26 January 2015; (2) pay his court and supervision fees; and (3) complete a substance abuse assessment. Based on those reports, on 8 May 2015, the trial court found defendant in willful violation of his probation, modified the original judgments, and sentenced defendant to 90 days in the custody of the DAC.

In July 2015, defendant attended an appointment with his probation officer, Tony Gibson (“Officer Gibson”), and the parties scheduled their next meeting for 26 August. When defendant did not report for that appointment, Officer Gibson left him a voicemail instructing him to come in to the office the following day. After he again failed to appear, Officer Gibson visited defendant’s home on 30 August. Defendant was not at home at the time, but Officer Gibson told his mother that he should report

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for an appointment on 1 September. He failed to attend. On 10 September, Officer Gibson again attempted to locate defendant at his residence. Defendant was not at home, so Officer Gibson left another message instructing defendant to come in for an appointment on 14 September. After defendant failed to appear, on 16 September, Officer Gibson returned to the residence where he spoke with defendant in person. The parties scheduled defendant's next appointment for 25 September. When defendant failed to appear on that date, Officer Gibson decided to file additional violation reports in both of defendant's cases. The reports alleged that defendant had willfully violated certain conditions of his probation by: (1) testing positive for marijuana on 3 September; (2) failing to report for a substance abuse assessment on 15 September following the positive drug test; (3) failing to make any payments toward his supervision fees or court-ordered costs and fines; and (4) failing to obtain any form of verifiable employment during his period of supervision.

On 27 September, Officer Gibson left a note at defendant's residence scheduling a meeting for 8 October and instructing that this would be his last appointment. Defendant failed to attend. On 9 October, Officer Gibson completed supplemental violation reports in both cases, alleging that defendant had absconded from supervision by failing to report for scheduled office appointments on 26 and 27 August; 1, 14, and 25 September; and 8 October 2015.

Following a hearing, on 3 December 2015, the trial court found that defendant had willfully avoided supervision, revoked his probation, and activated both of his suspended sentences. Defendant noted his appeal in open court.

II. Analysis

Defendant argues that the trial court erred by revoking his probation because the evidence was insufficient to prove that he willfully absconded from supervision. We disagree.

A hearing to revoke a defendant's probationary sentence only requires that the evidence 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. 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.

State v. Young, 190 N.C. App. 458, 459, 660 S.E.2d 574, 576 (2008) (citations and quotation marks omitted).

N.C. Gen. Stat. § 15A-1344 (2015) provides the trial court's authority and procedures for altering or revoking the conditions of a defendant's probation. The statute states, *inter alia*, that a trial court may only revoke probation where the defendant: (1) commits a new criminal offense, pursuant to N.C. Gen. Stat. § 15A-1343(b)(1); (2) absconds "by willfully avoiding supervision or by willfully making the defendant's whereabouts unknown to the supervising probation officer," pursuant to

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N.C. Gen. Stat. § 15A-1343(b)(3a); or (3) violates any probation condition after previously serving two periods of confinement following violations, pursuant to N.C. Gen. Stat. § 15A-1344(d2). N.C. Gen. Stat. § 15A-1344(a); *State v. Nolen*, 228 N.C. App. 203, 205, 743 S.E.2d 729, 730 (2013). For all other violations, the court may either alter the terms of the defendant's probation or impose a 90-day period of confinement. N.C. Gen. Stat. §§ 15A-1344(a), (d2); *Nolen*, 228 N.C. App. at 205, 743 S.E.2d at 730.

In the instant case, defendant argues that his failure to report for appointments with Officer Gibson did not constitute "absconding," pursuant to N.C. Gen. Stat. § 15A-1343(b)(3a), but rather was merely a violation of the condition requiring him to regularly report to his probation officer, *see* N.C. Gen. Stat. § 15A-1343(b)(3). For support, defendant relies on this Court's holding in *State v. Williams*, __ N.C. App. __, 776 S.E.2d 741 (2015). We are not persuaded.

In *Williams*, the supervising officer filed a report alleging that the defendant had violated seven conditions of his probation, including the requirement to not willfully abscond. __ N.C. App. at __, 776 S.E.2d at 742. At the revocation hearing, the State established that the defendant had missed several scheduled meetings with his probation officer, was traveling back and forth between North Carolina and New Jersey without permission, and had changed his address without informing his supervising officer. *Id.* The court found the defendant in willful violation of the

conditions alleged and activated his sentence. *Id.* However, the judgment did not include a specific finding that the defendant had absconded from supervision, pursuant to N.C. Gen. Stat. § 15A-1343(b)(3a). *Id.* at __, 776 S.E.2d at 744. On appeal, we determined that the State’s evidence was only sufficient to prove violations of N.C. Gen. Stat. §§ 15A-1343(b)(2)-(3), which are not, alone, permissible grounds for revocation. *Id.* at __, 776 S.E.2d at 745; *see also* N.C. Gen. Stat. §§ 15A-1343(b)(2)-(3) (requiring, respectively, that a probationer “[r]emain within the jurisdiction of the court unless granted written permission to leave” and “[r]eport as directed . . . to the [probation] officer at reasonable times and places and in a reasonable manner”). Because the defendant’s probation officer had regularly spoken with him via telephone and knew his whereabouts at all relevant times, we concluded that the evidence did not support a finding of absconding and reversed the trial court’s revocation of the defendant’s probation. *Williams*, __ N.C. App. at __, 776 S.E.2d at 746.

The instant case is distinguishable in several ways. First, at the conclusion of the hearing, the trial court specifically found that defendant had “willfully avoided supervision while on probation” and accordingly “revoke[d] his probation on that basis in each case.” Both of the court’s judgments reflect this finding. *Contra id.* at __, 776 S.E.2d at 744. This finding is supported by the evidence, which shows that defendant missed six consecutive appointments with Officer Gibson, including at

least two that he was actively involved in scheduling. Second, unlike in *Williams*, Officer Gibson was never able to reach defendant by telephone, and defendant did not respond to voicemails or otherwise keep Officer Gibson informed of his whereabouts. Furthermore, on 27 September 2015, Officer Gibson left a note at defendant's residence scheduling an appointment for 8 October and cautioning that "this will be the last appointment." Despite this warning and multiple home visits by Officer Gibson, defendant still did not appear for his appointment. His continued failure to report, notwithstanding sufficient notice of each of the missed meetings, constitutes willful avoidance of supervision. Accordingly, the trial court did not err by determining that defendant had absconded.

III. Conclusion

For the reasons stated above, the trial court did not err by revoking defendant's probation based on its determination that he had willfully absconded from supervision, pursuant to N.C. Gen. Stat. § 15A-1343(b)(3a). Therefore, we affirm the judgment of the trial court.

AFFIRMED.

Judges BRYANT and STEPHENS concur.

Report per Rule 30(e).