IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-307

Filed: 19 June 2018

Burke County, Nos. 15 CRS 51782, 17 CRS 49

STATE OF NORTH CAROLINA

v.

KATLYN NICHELLE MILLIGAN

Appeal by defendant from judgments entered 6 November 2017 by Judge Hugh B. Lewis in Burke County Superior Court. Heard in the Court of Appeals 18 June 2018.

Attorney General Joshua H. Stein, by Assistant Attorney General Teresa M. Postell, for the State.

Mark Hayes, for defendant-appellant.

CALABRIA, Judge.

Katlyn Nichelle Milligan ("defendant") appeals from judgments entered upon revocation of her probation. After careful review, we affirm.

I. Background

On 30 November 2015, defendant pleaded guilty in 15 CRS 51782 to burning other buildings in violation of N.C. Gen. Stat. § 14-67.1 (2017). The trial court sentenced defendant to 6 to 17 months in the custody of the North Carolina Division of Adult Correction, suspended her active sentence, and placed defendant on supervised probation for 36 months. On 12 September 2017, defendant pleaded guilty in 17 CRS 49 to possession of a controlled substance on a prison/jail premises pursuant to N.C. Gen. Stat. § 90-95(e)(9). The trial court imposed an additional 6-to-17-month suspended sentence and placed defendant on supervised probation for 18 months.

On 29 August 2017, defendant's probation officer ("Officer Edwards") filed a violation report in 15 CRS 51782 alleging, *inter alia*, that defendant had willfully violated her probation by committing two new criminal offenses—misdemeanor larceny and possession of a controlled substance on a prison/jail premises—in violation of N.C. Gen. Stat. § 15A-1343(b)(1). On 2 November 2017, Officer Edwards filed violation reports in both cases alleging that defendant had willfully violated her probation by (1) submitting an adulterated drug screen, and (2) refusing to answer Officer Edwards's questions about the adulterated urine sample.

On 6 November 2017, the trial court held a probation violation hearing in both cases. At the beginning of the hearing, defendant admitted all allegations in the State's violation reports. Officer Edwards subsequently testified on behalf of the

State. She explained that, while on probation, defendant was convicted of both misdemeanor larceny and possession of a controlled substance on a prison/jail premises, and she incurred additional charges after submitting an adulterated drug screen to Officer Edwards. "[W]ith two convictions and a third coming up," Officer Edwards recommended revocation. After noting that defendant was pregnant with her third child, defense counsel requested that the trial court consider a more lenient punishment and "possibly review in 60 days to see how she does between now and then." At the conclusion of the hearing, the trial court revoked defendant's probation in both cases and ordered that she serve her sentences consecutively. Defendant appeals.

II. Analysis

Defendant's sole argument on appeal is that the trial court erred in revoking her probation in 17 CRS 49 based on a violation not specifically authorized by N.C. Gen. Stat. § 15A-1344(a). 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.

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

"Before revoking a defendant's probation, a trial court must conduct a hearing to determine whether the defendant's probation should be revoked, unless the defendant waives the hearing." *State v. Moore*, 370 N.C. 338, 340, 807 S.E.2d 550, 552 (2017). "The State must give the probationer notice of the hearing and its purpose, including a statement of the violations alleged." N.C. Gen. Stat. § 15A-1345(e). Pursuant to N.C. Gen. Stat. § 15A-1344(a), the trial court may only revoke probation where the defendant: commits a new criminal offense, N.C. Gen. Stat. § 15A-1343(b)(1); absconds "by willfully avoiding supervision or by willfully making the defendant's whereabouts unknown to the supervising probation officer," N.C. Gen. Stat. § 15A-1343(b)(3a); or violates any probation condition after previously serving two 90-day periods of confinement in response to prior violations, pursuant to N.C. Gen. Stat. § 15A-1344(d2).

On appeal, defendant concedes that she submitted an adulterated drug screen, yet asserts that the trial court lacked jurisdiction to revoke her probation in 17 CRS 49 for a violation not specifically enumerated in N.C. Gen. Stat. § 15A-1344(a). However, defendant fails to acknowledge that it is, in fact, a criminal offense to "[a]dulterate a urine or other bodily fluid sample with the intent to defraud a drug or alcohol screening test." N.C. Gen. Stat. § 14-401.20(b)(1); *see also* N.C. Gen. Stat. § 14-401.20(c)(1) (providing that a first offense is a Class 1 misdemeanor, while a second or subsequent offense is punishable as a Class I felony).

Defendant likely is aware that her actions were unlawful, because at the violation hearing, Officer Edwards testified that defendant "submitted an adulterated drug screen and *has been charged with that*[.]" Nevertheless, defendant contends that the State failed to satisfy N.C. Gen. Stat. § 15A-1345(e)'s notice requirement, because the violation report did not allege a revocable condition. However, our Supreme Court recently held that N.C. Gen. Stat. § 15A-1345(e) "requires only a statement of *the actions that violated the conditions*, not of the conditions that those actions violated." *Moore*, 370 N.C. at 341, 807 S.E.2d at 553 (emphasis added).

The violation report in 17 CRS 49 alleged the following willful violations of defendant's probation:

> 1. Condition of Probation " . . . answer all reasonable inquiries by the officer . . ." in that
> ON NOVEMBER 2, 2017, THIS DEFENDANT SUBMITTED A URINE DRUG SAMPLE THAT WAS COLD AND CLEAR IN COLOR WITH THE CUP APPEARING TO HAVE BEEN DIPPED IN THE TOILET BOWL WATER. WHEN ASKED ABOUT THE SITUATION, THIS DEFENDANT WOULD NOT ANSWER ANY QUESTIONS.
>
> 2. Other Violation
> ON NOVEMBER 2, 2017, THIS DEFENDANT SUBMITTED AN ADULTERATED URIN[E] DRUG SCREEN BY DIPPING THE COLLECTION CUP IN THE TOILET BOWL WATER.

These allegations sufficiently notified defendant of the "alleged acts by defendant that, if proved, would violate a probation condition, as required by subsection 15A-1345(e)." *Id.* at 345, 807 S.E.2d at 555. Moreover, at the hearing, defendant admitted all violations alleged by the State.

Accordingly, defendant has failed to demonstrate that the trial court abused its discretion by revoking her probation in 17 CRS 49. Therefore, we affirm the judgments revoking defendant's probation and activating her suspended sentences.

AFFIRMED.

Judges DAVIS and BERGER concur.

Report per Rule 30(e).