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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-1216

Filed: 16 July 2019

Watauga County, No. 17 CRS 50437

STATE OF NORTH CAROLINA

v.

KEITH ALBAN MOODY

Appeal by Defendant from Judgment entered 2 July 2018 by Judge Gary Gavenus in Watauga County Superior Court. Heard in the Court of Appeals 8 May 2019.

*Attorney General Joshua H. Stein, by Assistant Attorney General Allison A. Angell, for the State.*

*Charlotte Gail Blake for defendant-appellant.*

HAMPSON, Judge.

**Factual and Procedural Background**

Keith Alban Moody (Defendant) appeals from the trial court's "Judgment and Commitment upon Revocation of Probation" (Revocation Judgment) finding Defendant willfully absconded, revoking his probation, and activating his suspended sentence. The Record before us tends to show the following:

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On 27 November 2017, Defendant was indicted for Possession of Drug Paraphernalia, Possession of Methamphetamine, and having attained the status of Habitual Felon. Pursuant to a plea agreement, Defendant pleaded guilty to these charges, and on 19 March 2018, the trial court sentenced Defendant to a suspended term of 23 to 40 months' imprisonment and placed him on supervised probation for 24 months.

On 9 May 2018, Defendant's probation officer, Kelly Harding (Officer Harding), filed a Violation Report (First Violation Report) alleging Defendant had willfully violated:

1. Condition of Probation "The defendant shall pay to the Clerk of Superior Court the "Total Amount Due" as directed by the Court or probation officer" in that THE DEFENDANT WAS ORDERED TO PAY \$387.50 COSTS, \$654.00 ATTORNEY'S FEES AND \$60.00 APPT FEE/MISC. AS OF 05/09/2018, THE DEFENDANT HAS MADE NO PAYMENT LEAVING HIM \$60.00 IN ARREARS.

2. Condition of Probation "The defendant shall pay to the Clerk of Superior Court the monthly supervision fee as set by law" in that AS OF 05/09/2018, THE DEFENDANT IS \$80.00 IN ARREARS ON PROBATION SUPERVISION FEES.

3. Condition of Probation "Remain within the jurisdiction of the Court unless granted written permission to leave by the Court or the probation officer" in that ON 05/09/2018 AT APPROXIMATELY 12:10 HOURS THE DEFENDANT LEFT THE STATE OF NORTH CAROLINA AND TRAVELED TO THE STATE OF TENNESSEE WITHOUT PRIOR PERMISSION OR KNOWLEDGE OF HIS SUPERVISING PROBATION OFFICER. THIS WAS VERIFIED BY AN ELECTRONIC MONITORING

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DEVICE USED TO HELP MONITOR COMPLIANCE WITH HIS PROBATION SUPERVIS[~~I~~]ON.

4. Condition of probation “Enroll in the Drug Treatment Court Program and comply with all conditions in the Drug Court Agreement,” in that . . . ON 05/09/2018, THE DEFENDANT WAS DISCHARGED UNSUCCESSFULLY FROM THE WATAUGA COUNTY DRUG TREATMENT COURT PROGRAM BY THE HONORABLE TED MCENTIRE DUE TO NON COMPLIANCE.

Defendant was arrested based on these violations and subsequently released from custody after posting bond. At the time of his arrest, Defendant had been living at 272 Trivette Circle for the previous seven or eight years; however, Defendant’s landlord had recently begun the process of evicting Defendant.

On 6 June 2018, Defendant reported to the probation office and met with Scott Maltba (Officer Maltba), a probation officer with the Department of Public Safety. During this meeting, Officer Maltba asked Defendant for his current address, and Defendant stated he would need to talk to his aunt (Aunt Linda) to get her address, as Defendant claimed he would be able to stay with Aunt Linda. Using Officer Maltba’s phone, Defendant called Aunt Linda, asked her for her address, and provided this address to Officer Maltba, who wrote the address down in a notebook. Defendant then handed the phone to Officer Maltba, who asked Aunt Linda whether Defendant would be allowed to reside with her. Aunt Linda said “that was fine, that [Defendant] could live there.” Officer Maltba, however, did not verify the address

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Defendant provided him with Aunt Linda. The address Defendant gave to Officer Maltba was 3618 Mountain Dale Road, Vilas, North Carolina.

Later that evening at approximately 8:00 p.m., Officer Harding and another probation officer conducted an unannounced home visit at the 3618 Mountain Dale Road address. The officers spoke with Aunt Linda, who informed them that “the defendant was not living there and he was not welcome there.” Aunt Linda admitted to speaking with Officer Maltba earlier in the day and to providing her address to the officer; however, “[s]he wasn’t sure why they had ask[ed] for her address[.]” During their conversation, Aunt Linda again reiterated that Defendant “was not living there, nor could he live there, and that she did not know why he would be asking for her address.” Based on this visit, Officer Harding concluded that Defendant had provided Officer Maltba with a false address.

The following day, 7 June 2018, Defendant reported to Officer Harding’s office around 8:30 a.m., at which time Officer Harding confronted Defendant about the false address and asked him for a new, current address. Defendant claimed he was still allowed to stay at Aunt Linda’s address; however, Officer Harding said he could not, based on her conversation with Aunt Linda the previous night. Thereafter, Defendant asserted he would be able to stay at his previous address, 272 Trivette Circle; however, again, Officer Harding stated he could not, based on her conversation

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with Defendant's landlord who informed her that the eviction process had already begun. Defendant never provided an acceptable address to Officer Harding.

During this meeting, Officer Harding also requested a drug screen for Defendant. The specimen Defendant provided had particles floating in it and was not acceptable. Thereafter, Officer Harding and another probation officer both told Defendant to wait in the lobby while they tried to determine the proper course of action regarding the drug screen. However, Defendant left the lobby, and Officer Harding did not hear from Defendant again until he was subsequently arrested on or around 26 June 2018.

At approximately 4:00 p.m. that afternoon, 7 June 2018, Defendant was to return to Officer Harding's office to have an electronic monitoring device installed. Defendant, however, did not show up to this visit or inform Officer Harding of his whereabouts. Sometime that evening, Officer Harding and an intern visited both the 3618 Mountain Dale Road and 272 Trivette Circle addresses but could not locate Defendant. At the 272 Trivette Circle address, Officer Harding spoke with Defendant's landlord, who informed her that Defendant was not living there anymore. Defendant's landlord also allowed Officer Harding to walk through Defendant's former apartment, thereby confirming Defendant did not live there anymore. Defendant also failed to report to Officer Harding's office for another

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scheduled visit on 11 June 2018 and, again, did not notify Officer Harding of his whereabouts.

At the revocation hearing, Defendant testified that on 6 June 2018, he did not know he was being evicted from the 272 Trivette Circle address. Regarding the 3618 Mountain Dale Road address, Defendant claimed he actually intended to live with his father, who happened to live in a camper on land adjacent to Aunt Linda's property, and that he asked Aunt Linda for her address because he did not have his father's address. Defendant admitted he never mentioned living in his father's camper to Officer Maltba. As for the events on 7 June 2018, Defendant claimed he left because he had no phone and no way of providing a new address and thought "it doesn't matter what I do [because] I'm going to prison."

On 14 June 2018, Officer Harding filed another Violation Report (Second Violation Report) alleging, *inter alia*, Defendant had willfully violated:

1. Regular Condition of Probation: General Statute 15A-1343(b)(3a) "Not to abscond, by willfully avoiding supervision or by willfully making the supervisee's whereabouts unknown to the supervising probation officer" in that, on 06/07/2018,<sup>1</sup> THE DEFENDANT PROVIDED A PROBATION OFFICER WITH A FALSE ADDRESS OF 3618 MOUNTAIN DALE ROAD, VILAS, NC. A HOME CONTACT WAS CONDUCTED AT THE GIVEN ADDRESS OF 3618 MOUNTAIN DALE ROAD, VILAS, NC ON 06/07/2018<sup>2</sup> AT 20:18 HRS BY PROBATION OFFICER[S] HARDING AND HODGES. BOTH PROBATION OFFICER'S [sic] SPOKE WITH THE DEFENDANT'S AUNT, LINDA[,] AND

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<sup>1</sup> At the probation hearing, Officer Harding orally amended the Second Violation Report to show that these events occurred on 6 June 2018.

<sup>2</sup> This home contact was conducted on 6 June 2018.

SHE STATED THE DEFENDANT WAS NOT LIVING THERE AND HE WAS NOT WELCOME THERE.

THE DEFENDANT HAS FAILED TO REPORT FOR HIS SCHEDULED OFFICE APPOINTMENTS, HE IS AVOIDING BEING PLACED ON AN ELECTRONIC MONITOR AND HIS ADDRESS AND WHEREABOUTS ARE UNKNOWN AT THIS TIME. THEREFORE, THE DEFENDANT HAS ABSCONDED FROM SUPERVISION.

The trial court held a hearing on both probation-violation reports on 2 July 2018. At the conclusion of the hearing, the trial court found Defendant had willfully violated the terms and conditions of his probation as alleged in both reports. The trial court thereafter entered judgment revoking Defendant's probation based on his absconding from supervision and activated Defendant's suspended sentence of 23 to 40 months' imprisonment. Defendant timely filed his Notice of Appeal on 13 July 2018.

### Issue

The sole issue on appeal is whether sufficient evidence existed of Defendant having absconded to support the trial court's revocation of Defendant's probation.

### Analysis

#### I. Standard of Review

A proceeding to revoke probation [is] often regarded as informal or summary, and the court is not bound by strict rules of evidence[.] An alleged violation by a defendant of a condition upon which his sentence is suspended need not be proven beyond a reasonable doubt. All that is required is that the evidence be such as to reasonably satisfy the judge in the exercise of his sound

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discretion that the defendant has violated a valid condition upon which the sentence was suspended. The findings of the judge, if supported by competent evidence, and his judgment based thereon are not reviewable on appeal, unless there is a manifest abuse of discretion.

*State v. Tennant*, 141 N.C. App. 524, 526, 540 S.E.2d 807, 808 (2000) (alteration in original) (citations and quotation marks omitted). Further, when the State presents “competent evidence establishing a defendant’s failure to comply with the terms of probation, the burden is on the defendant to demonstrate through competent evidence an inability to comply with the terms.” *State v. Talbert*, 221 N.C. App. 650, 652, 727 S.E.2d 908, 910-11 (2012) (citation and quotation marks omitted). An abuse of discretion will be found when the trial court’s ruling is “manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision.” *State v. Campbell*, 359 N.C. 644, 673, 617 S.E.2d 1, 19 (2005) (citation and quotation marks omitted).

II. Probation Revocation

We initially note in orally rendering its judgment, the trial court stated Defendant absconded from probation from “June 7, 2018, to June 26, 2018[,]” even though the Second Violation Report only alleged Defendant absconded from 6 June through 14 June 2018. In its written Revocation Order, the trial court found Defendant violated his probation by absconding, as alleged in the Second Violation Report, which the Revocation Order incorporated by reference. Therefore, in



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accordance with *State v. Melton*, we limit our review to whether sufficient evidence exists showing Defendant absconded from probation during the dates alleged in the Second Violation Report—6 June to 14 June 2018. *See* \_\_\_ N.C. App. \_\_\_, \_\_\_, 811 S.E.2d 678, 681 (2018) (holding that where the trial court orally renders a finding that a defendant absconded based on dates outside of those alleged in the violation report but the trial court’s written order incorporates the violation report, a reviewing court only considers the time period alleged in the violation report (citations omitted)).

A trial court “may only revoke probation for [committing a criminal offense] or [absconding], except as provided in [N.C. Gen. Stat. §] 15A-1344(d2).” N.C. Gen. Stat. § 15A-1344(a) (2017). A probationer absconds when he or she willfully avoids supervision or willfully makes his or her whereabouts unknown to the supervising probation officer. *Id.* § 15A-1343(b)(3a) (2017).

Defendant contends the trial court abused its discretion by revoking his probation because Defendant “only failed to comply with the regular conditions of probation that he report for office visits and inform the probation office of address changes and the special condition that he comply with electronic monitoring.”

Defendant is correct that a violation of these conditions of probation, standing alone, will not result in revocation. *See id.* § 15A-1344(a). For instance, this Court has held that a defendant’s failure to report for a scheduled office visit “does not,

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*without more*, violate N.C. Gen. Stat. § 15A-1343(b)(3a) when [defendant's] *exact actions* violate the explicit language of a wholly separate regular condition of probation which does not allow for revocation and activation of a suspended sentence.” *State v. Johnson*, 246 N.C. App. 139, 146, 783 S.E.2d 21, 26 (2016) (emphasis added) (citations omitted).

Here, however, there is evidence from which the trial court could find Defendant's actions constituted more than just missing scheduled office meetings; therefore, the trial court did not abuse its discretion in revoking Defendant's probation on the basis of absconding. On 6 June 2018, Defendant told Officer Maltba that he would be living with Aunt Linda. However, that evening Officer Harding went to Aunt Linda's house and was informed by Aunt Linda that Defendant “was not living there and he was not welcome there.” The following day, Defendant met with Officer Harding, and when confronted about the false address, Defendant insisted he could still stay at Aunt Linda's house or his previous residence, 272 Trivette Circle. However, Officer Harding had already confirmed that Defendant could not stay at either of these addresses. At the revocation hearing, Defendant claimed he actually intended on staying with his father in a camper on land adjacent to Aunt Linda's property. However, Defendant never mentioned this fact to either Officer Harding or Officer Maltba. This constitutes sufficient evidence supporting

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the trial court's conclusion that Defendant provided his probation officers with a false address.

In addition, on 7 June 2018, after providing an unacceptable drug-screen sample, two probation officers told Defendant to remain in the probation office. Defendant knew he was to remain in the office; however, he decided to leave anyway. Thereafter, Defendant did not attempt to contact Officer Harding to inform her of his whereabouts, even though it is a "defendant's responsibility to keep his probation officer apprised of his whereabouts." *State v. Trent*, \_\_\_ N.C. App. \_\_\_, \_\_\_, 803 S.E.2d 224, 232 (2017), *disc. rev. denied*, \_\_\_ N.C. \_\_\_, 809 S.E.2d 599-600 (2018). Later that evening, Officer Harding visited both addresses Defendant had provided, but Defendant was not present at either address. Officer Harding also testified she did not know where Defendant was after he left her office on the same day. Further, Defendant missed an appointment later that afternoon, at which time he was to have an electronic monitoring device installed. He then missed another appointment on 11 June 2018.

Taken together, the evidence in this case was sufficient for the trial court to determine Defendant's actions constituted more than simply missing scheduled appointments or failing to inform a probation officer of address changes. Rather, the evidence was sufficient to support a decision that Defendant's conduct evinced an intent to willfully avoid supervision. Thus, the evidence supports the trial court's

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finding that Defendant absconded. *See Tennant*, 141 N.C. App. at 526, 540 S.E.2d at 808 (“The findings of the judge, *if supported by competent evidence*, and his judgment based thereon are not reviewable on appeal, unless there is a manifest abuse of discretion.” (emphasis added) (citations and quotation marks omitted)). Therefore, we affirm the trial court’s revocation of Defendant’s probation.

**Conclusion**

For the foregoing reasons, we affirm the trial court’s Revocation Order revoking Defendant’s probation.

AFFIRMED.

Judges STROUD and YOUNG concur.

Report per Rule 30(e).