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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-1163

Filed: 1 December 2020

Union County, No. 17 CRS 51845, 50196

STATE OF NORTH CAROLINA

v.

LOGAN URISINI

Appeal by defendant from judgments entered 26 September 2019 by Judge Jeffery K. Carpenter in Union County Superior Court. Heard in the Court of Appeals 3 November 2020.

Attorney General Joshua H. Stein, by Assistant Attorney General Shelby Smith, for the State.

Joseph P. Lattimore for defendant-appellant.

TYSON, Judge.

Logan Urisini (“Defendant”) appeals from the revocation of his probation and activation of his suspended sentences. We affirm the trial court’s order.

I. Background

Defendant was indicted for felony stalking in Union County in 2017. Defendant was charged, in a separate Information with another felony stalking. The

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victim of the offenses was Madison Muhlsteff (“Muhlsteff”). Muhlsteff filed for thirteen “no-contact” orders against Defendant beginning 13 December 2016 through 4 January 2019.

Defendant pled guilty to both charges of felony stalking. The trial court accepted Defendant’s plea agreement. After a hearing and relying upon Defendant’s prior record level I, Defendant was sentenced at the lowest level of the presumptive range to two terms of five to fifteen months to run consecutively. The trial court suspended the sentences and placed Defendant on supervised probation for 60 months.

On 23 October 2018 and 24 April 2019, Defendant’s probation officer filed violation reports alleging Defendant had violated the terms and conditions of probation. The trial court found Defendant had willfully violated the terms of probation, revoked Defendant’s probation, and ordered the activation of Defendant’s suspended consecutive sentences. Defendant gave oral notice of appeal.

II. Jurisdiction

Defendant appeals from the final judgment and commitment upon revocation of probation pursuant to N.C. Gen. Stat. §§ 7A-27(b) and 15A-1347(a) (2019).

III. Timely Motion to Dismiss

The State argues Defendant’s appeal should be dismissed for filing an untimely brief. “Within thirty days after the record on appeal has been filed with the appellate

court, the appellant shall file a brief in the office of the clerk of the appellate court and serve copies thereof upon all other parties separately represented.” N.C. R. App. P. 13(a)(1),(c). Subsequent motions to extend were allowed by this Court on 28 February 2020, and 27 March 2020, giving Defendant until 1 April 2020 and 14 April 2020, respectively to file the brief in this matter. Defendant submitted his brief on 15 June 2020.

Defendant asserts he relied upon the Supreme Court of North Carolina’s “Order in Response To The COVID-19 Outbreak.” That order, dated 27 March 2020, invokes “Article IV, Section 13(2) of the Constitution of North Carolina” and provides that appellate deadlines falling between March 27, 2020 and April 30, 2020 “are hereby extended for 60 days.” Due to the unique nature of these measures and the lack of asserted prejudice to the State, we deny the State’s motion to dismiss and review Defendant’s appeal.

IV. Standard of Review

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. (emphasis supplied).

State v. Young, 190 N.C. App. 458, 459, 660 S.E.2d 574, 576 (2008) (citation and internal quotation marks omitted). “Competent evidence is evidence that a reasonable mind might accept as adequate to support the finding.” *State v. Armstrong*, 203 N.C. App. 399, 416-417, 691 S.E.2d 433, 445 (2010) (citations and internal quotation marks omitted).

V. Evidence to Support Revocation

Defendant asserts the trial court erred in finding and concluding Defendant had violated a condition of probation: “As regular conditions of probation, a defendant must: (1) Commit no criminal offense in any jurisdiction.” N.C. Gen. Stat. § 15A-1343(b)(1) (2019).

At the probation revocation hearing, the State’s evidence must “reasonably satisfy the judge in the exercise of his sound discretion that the defendant has willfully violated a valid condition of probation.” *Young*, 190 N.C. App. at 459, 660 S.E.2d at 576 (internal quotation omitted). The Justice Reinvestment Act “limited a trial court’s authority to revoke probation to *only* those circumstances in which the probationer . . . commits a new crime in violation of N.C. Gen. Stat. § 15A-1343(b)(1)” or absconds. *State v. Johnson*, 246 N.C. App. 139, 144, 783 S.E.2d 21, 25 (2016).

A. Probation Conditions

The trial court suspended sentences for Defendant in 17CRS051845 (“First Charge”) and 17CRS050196 (“Second Charge”) pursuant to enumerated conditions.

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In the judgment on the First Charge under the “Suspension of Sentence” section, Defendant was placed upon supervised probation for sixty (60) months. Box 4 states: “The defendant shall comply with the conditions set forth in file number ‘Union/17CRS050196/51.’” In “Union/17CRS050196/51,” the Second Charge judgment form provides in box 20:

Defendant shall . . . [n]ot assault, threaten, harass, be found in or on the premises or workplace of, or have any contact with VICTIM OR HER FAMILY. “Contact” includes any defendant-initiated contact, direct or indirect, by any means, including, but not limited to, telephone, personal contact, e-mail, pager, gift-giving, telefacsimile machine or through any other person, except _____.

No exceptions are listed. The language provided in box 4 of the First Charge judgment provides Defendant is under these same conditions for both judgments. The violation reports also assert Defendant committed a new crime while under probation supervision in violation of the standard conditions of probation. N.C. Gen. Stat. § 15A-1343(b)(1) (2019).

B. Probation Violations

The State’s evidence tended to show Defendant violated the probationary judgment on two separate incidents.

1. Cyberstalking

The first violation report alleged Defendant was charged with cyberstalking on 15 October 2018. The probation violation report alleged Defendant had “willfully

violated” a condition of probation that he “[c]ommit no criminal offense in any jurisdiction.” N.C. Gen. Stat. § 15A-1343(b)(1). During the hearing, Defendant’s probation officer, Shannon Moree, testified she had discussed Defendant’s conditions of probation prior to his new charge for cyberstalking. Moree explained Defendant was ordered not to have any contact with the Muhlsteff family, which included anyone attached to the family.

During the hearing, Bryce Braswell, Muhlsteff’s boyfriend, testified Defendant contacted him through direct-messages from a Twitter account. The messages from Defendant to Braswell were admitted into evidence and state: “Do you understand how irrelevant your existence is? You only get one life, get out while you can.” “Everyone near your social circle knows how god d*** stupid you are. None of them are stupid enough to f*** with me. You’re playing with [f]ire.” “Im (sic) trying to save you. Get the f*** out of here.” “Believe me when I say I want to make an example out of you. I’m just giving you a chance to escape.” “GET OUT WHILE YOU CAN BRYCE!!!” “Save yourself.” Defendant was arrested and charged with cyberstalking.

2. Attempted Contact

Probation officer Moree testified the second violation report asserted Defendant had attempted to make contact with Muhlsteff at her residence in April 2019. Moree was notified by Muhlsteff’s father, the District Attorney, and Sheriff’s Office of Defendant’s plan to go to the Muhlsteff’s home to “profess his love to

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[Muhlsteff].” These alerts prompted law enforcement units to be stationed near Muhlsteff’s home.

A deputy sheriff drove by Muhlsteff’s home at 11:30 p.m. and saw Defendant “in the roadway directly in front of the house.” Defendant reported he had walked four to five miles to Muhlsteff ’s home. Defendant was standing in the darkness approximately five feet from Muhlsteff ’s driveway when the sheriff’s deputy observed him. Defendant told the officer he wanted to speak to Muhlsteff’s family and to her boyfriend. Defendant wanted the confrontation between him and Muhlsteff’s family recorded on the news media. The deputy testified Defendant had made shrines for Muhlsteff, and Defendant stated it “was the appropriate time to be there, such as it being the pink full moon, which is the most romantic of all the full moons and the best full moon to profess your love under.” Defendant possessed a “genie lamp” and “magic carpet.” Defendant told the sheriff’s deputy he knew Muhlsteff and her family were inside the house. Defendant was arrested at the scene.

Muhlsteff and her family were not at home at that time. Muhlsteff testified, “I left because I was scared that he would come.” The second violation report was filed 24 April 2019. In the description of the alleged violation, under number 7 the probation violation report stated:

That the defendant not assault, threaten or contact the victim” in that on 4-27-17, the offender was ordered not to be found in or on the premises of, or have any contact with the victim or the family. However, on 4-20-19 the offender

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attempted to make contact with the victim at her residence and was arrested. This behavior is a direct violation of the conditions of supervision.

At the conclusion of Defendant's probation officer's testimony, the State asked Moree, "Do you have a recommendation regarding the Defendant's four violations of the conditions of his probation?" Moree replied, "Yes. That the offender should definitely be revoked. He's definitely a public safety risk to the [Muhlsteff] family." The trial court found by a preponderance of the evidence that Defendant had committed a new criminal offense of cyberstalking on 15 October 2018. Defendant appeals from the revocation of his probation and activation of his suspended sentences.

VI. Analysis

For violations occurring on or after 1 December 2011, our statutes allow revocation and activation of suspended sentences only for the commission of a new crime or for absconding. N.C. Gen. Stat. § 15A-1343(a),(b)(1) (2019). Defendant violated the no contact condition of his probation by direct-messaging Muhlsteff's boyfriend which resulted in his being charged with cyberstalking. Defendant violated an express condition his probation by going to Muhlsteff's home and attempting to contact her and her family. To support its decision to revoke Defendant's probation, the trial court found Defendant's conduct was charged as cyberstalking and he had

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committed a new independent crime while under probation supervision. N.C. Gen. Stat. § 15A-1343(b)(1).

Defendant's suspended sentence and probation was subject to the express conditions to not engage in further criminal conduct. "As regular conditions of probation, a defendant must: (1) Commit no criminal offense in any jurisdiction." N.C. Gen. Stat. § 15A-1343(b)(1). Defendant's arguments are overruled.

VII. Conclusion

The State provided competent evidence to support the trial court's reasonable finding that Defendant violated the conditions of his probation. The trial court did not abuse its discretion in finding Defendant had committed a new crime and had willfully violated the conditions of his probation to revoke and activate his suspended sentence. The judgment appealed from is affirmed. *It is so ordered.*

AFFIRMED.

Judges MURPHY and HAMPSON concur.

Report per Rule 30(e).