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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-862

Filed: 21 July 2020

Craven County, Nos. 18 CRS 498-99, 15 CRS 52978, 15 CRS 52302

STATE OF NORTH CAROLINA

v.

WILLIAM DAYSHAWN WILSON

Appeal by defendant from judgment entered 23 April 2019 by Judge John E. Nobles, Jr., in Craven County Superior Court. Heard in the Court of Appeals 4 March 2020.

Attorney General Joshua H. Stein, by Assistant Attorney General Carole Biggers, for the State.

Bettis Law Firm, PLLC, by Lee W. Bettis, Jr., for defendant-appellant.

ZACHARY, Judge.

Defendant William Dayshawn Wilson appeals from a judgment entered upon the trial court's revocation of his probation for absconding from supervision pursuant to N.C. Gen. Stat. § 15A-1343(b)(3a) (2019). After careful review, we affirm the trial court's judgment.

Background

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Prior to being placed on supervised probation in Craven County, Defendant was already on supervised probation in two other counties. On 4 April 2017, in Pitt County Superior Court, Defendant received 36 months' supervised probation for the offense of possession of a firearm by a felon, 15 CRS 55798. On 13 June 2017, in Lenoir County Superior Court, Defendant received 24 months' supervised probation for possession of a Schedule II controlled substance, 14 CRS 52847.

On 6 August 2018, Defendant entered an *Alford* plea in Craven County Superior Court to two counts of possession of a controlled substance, and to driving while impaired, 15 CRS 52978 and 15 CRS 52302. The State took a dismissal of five other charges. The trial court accepted Defendant's *Alford* plea, consolidated the judgments, and suspended the sentence pending Defendant's successful completion of his supervised probation. If Defendant's sentence were activated, he would serve a minimum of 10 months and a maximum of 21 months in the custody of the Division of Adult Correction, with the sentence "to run at expiration of [his sentences in] Lenoir Co. 14 – 52847 & Pitt Co. 15 – 55798."¹

On 10 August 2018, Defendant's supervising officer filed a violation report alleging that Defendant willfully violated a term of his probation by "us[ing], possess[ing] or control[ling] an[] illegal drug or controlled substance[.]" after

¹ The Assistant District Attorney explained at Defendant's probation revocation hearing that the file number for the offense in Lenoir County became No. 18 CRS 499; the file number for the offense in Pitt County became No. 18 CRS 498.

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Defendant tested positive for marijuana three times, and admitted to smoking marijuana on two other occasions. On 30 August 2018, Defendant's supervising probation officer filed a violation report alleging that Defendant willfully violated two terms of his probation by (1) failing to "[s]ubmit upon the request of any law enforcement or supervising officer, to any physical, chemical, blood, or breath test or to a urinalysis for the detection of alcohol or controlled substances"; and (2) "us[ing], possess[ing] or control[ling] an[] illegal drug or controlled substance[.]" In short, Defendant allegedly attempted to use "a device to defraud a drug screen," and "admitted to smoking marijuana three days ago." (Original in all caps).

On 13 November 2018, Defendant's probation revocation came on for hearing in Craven County Superior Court before the Honorable John E. Nobles, Jr. The trial court found that Defendant had violated the terms of his probation, as alleged in the probation violation reports, and modified Defendant's probation. The trial court sentenced Defendant to 30 days in jail, added 12 months to his period of probation, and ordered as a special condition of Defendant's probation that "if [Defendant] tests positive for any illegal drugs, he is to be arrested and held under no bond until [the] next superior probation date[.]" (Original in all caps). He was placed under the supervision of Officer John G. Real, Sr.

On 15 January 2019, Defendant submitted to a urinalysis, which indicated that his urine tested positive for the presence of marijuana. Defendant denied using

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marijuana, and he requested that the urine sample undergo further testing. Officer Real acquiesced, but warned Defendant that he would be arrested if the results of the second test were positive, as ordered by Judge Nobles. On 12 February 2019, Officer Real notified Defendant and his attorney that the second drug test results were positive. Officer Real instructed both Defendant and his attorney that Defendant was to turn himself in at the probation office in New Bern at 2:00 p.m. on 14 February 2019, at which time he would be arrested.

About 1:30 p.m. on 14 February 2019, another attorney telephoned Officer Real. He said that he was representing Defendant, that Defendant was in his office, and that he was going to talk to him. Within the hour, the attorney texted Officer Real and asked that Defendant be allowed to report for arrest on 15 February 2019 so that he could spend Valentine's Day with his wife and children. Officer Real did not agree to this request. Officer Real received a series of texts from the attorney, who ultimately stated that Defendant would surrender himself on 15 February 2019. Defendant failed to appear at 2 p.m. on 14 February 2019 as agreed.

Officer Real then began searching for Defendant. Officer Real drove by the office of Defendant's attorney, but he was not there. Officer Real went to Defendant's home to arrest him, but no one answered the door, and "[t]he house appeared to be dark[.]" He also tried to reach Defendant by phone, calling every number associated

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with Defendant, including his wife's number and the numbers of other family members. He called the jail, hospital, and a local bondsman, to no avail.

Defendant failed to appear on 15 February 2019, as his attorney told Officer Real he would. Officer Real called Defendant's attorney, who now had no idea where Defendant was.

On 15 February 2019, Chief Probation Officer Hank Witten filed a violation report alleging that Defendant had willfully absconded from supervision on 14 February 2019 in violation of the terms of his probation. In addition, a magistrate issued a warrant for Defendant's arrest that day, and law enforcement personnel issued a media release that Defendant was wanted by the Craven County Sheriff's Office.

On 2 April 2019, United States Marshals located Defendant in Pitt County. Since the last time Officer Real had seen Defendant, Defendant had cut off his dreadlocks and obtained a Florida driver's license under a false name, using a new photograph of himself without dreadlocks. He also had over \$30,000 cash in his apartment when he was apprehended by the Marshals.

On 23 April 2019, Defendant's probation revocation came on for hearing before Judge Nobles in Craven County Superior Court. The trial court found that Defendant absconded from supervision, revoked his probation, and activated his suspended sentence. The trial court ordered that Defendant's "sentence shall run at the

expiration of all sentences [Defendant is] obligated to serve from Pitt County File No. 15CRS55798 and Lenoir County File No. 14CRS52487.” (Original in all caps).

Defendant timely appealed.

Discussion

Defendant argues that the trial court erred in revoking his probation, contending that “the allegations contained in the [r]evocation [r]eport do not arise to the level of absconding[,]” and that “[t]he trial court should have limited consideration of testimony and evidence to the dates and allegations contained in the revocation report.” We disagree.

I. Standard of Review

An alleged violation of a condition of probation need not be proven beyond a reasonable doubt: the evidence need only “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. Krider*, 258 N.C. App. 111, 112-13, 810 S.E.2d 828, 829 (citation omitted), *modified and aff’d per curiam*, 371 N.C. 466, 818 S.E.2d 102 (2018). “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.” *Id.* at 113, 810 S.E.2d at 829 (citation omitted).

II. Analysis

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“Probation or suspension of sentence comes as an act of grace to one convicted of, or pleading guilty to, a crime.” *State v. Murchison*, 367 N.C. 461, 463, 758 S.E.2d 356, 358 (2014) (citation omitted). “The Supreme Court of the United States has observed that revocation of probation deprives an individual only of the conditional liberty dependent on the conditions of probation.” *Id.* (citations and internal quotation marks omitted).

“Before revoking . . . probation, the court must, unless the probationer waives the hearing, hold a hearing to determine whether to revoke . . . probation and must make findings to support the decision and a summary record of the proceedings.” N.C. Gen. Stat. § 15A-1345(e). “Probation violation hearings are generally informal, summary proceedings and the alleged probation violations need not be proven beyond a reasonable doubt.” *State v. Johnson*, 246 N.C. App. 132, 135, 782 S.E.2d 549, 552 (2016) (citation omitted). Nevertheless, “[t]he burden of proof rests upon the State to show a defendant willfully violated his probation conditions.” *Id.* (citation omitted).

A trial court’s authority to revoke probation is statutorily limited. *See* N.C. Gen. Stat. § 15A-1344(a). Absconding, pursuant to N.C. Gen. Stat. § 15A-1343(b)(3a), is one of the permitted bases for revocation of probation. *Id.* § 15A-1344(a). As this Court has held, “a defendant absconds when he willfully makes his whereabouts unknown to his probation officer, and the probation officer is unable to contact the

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defendant.” *State v. Melton*, 258 N.C. App. 134, 138, 811 S.E.2d 678, 681 (2018) (citation omitted).

In the instant case, Chief Officer Witten filed a violation report on 15 February 2019, alleging four violations of Defendant’s probation, including, *inter alia*:

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, AT 1600 ON 2/14/19 PPO REAL WENT TO 11 ELS ST IN NEW BERN, NC AND ATEMPTED TO MAKE CONTACT WITH [DEFENDANT] AFTER HE FAILED TO REPORT FOR AN []OFFICE APOINTEMNT AT 403 GEORGE ST IN NEW BERN, NC AND TO ANSWER HIS CELL PHONE. [DEFENDANT] REFUSED TO REPORT OR MAKE HIS WHEREABOUTS KNOWN TO THE PROBATION OFFICE / OFFICER AVOIDING SUPERVISION THEREBY ABSCONDING PROBATION SUPERVISION.

After review, we conclude that there was sufficient evidence to satisfy the trial court that Defendant willfully absconded from supervision on 14 February 2019, thereby violating a valid condition upon which his sentence was suspended. Without reciting every event prior to the filing of the violation report, it will suffice to note that: (1) Defendant knew that he would be arrested, as Judge Nobles ordered, if he failed a drug test; (2) Defendant’s urine sample from 15 January 2019 tested positive for marijuana; (3) an additional urinalysis confirmed that Defendant’s 15 January 2019 urine sample tested positive for marijuana, prompting Officer Real to instruct

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Defendant to report for arrest at 2:00 p.m. on 14 February 2019; (4) Officer Real spoke with Defendant's original attorney, who "had already set up for [Defendant] to surrender himself" on 14 February 2019; (5) Defendant never reported to Officer Real on 14 February 2019 or surrendered himself for arrest; (6) Officer Real called every available number associated with Defendant, including those belonging to Defendant's wife and other family members, and left a message, "but no one ever called [him]"; and (7) Officer Real attempted to find Defendant at home, his attorney's office, the hospital, and the jail, and even contacted a bail bondsman to see if he was aware of Defendant's whereabouts, but was unable to locate Defendant.

This is ample evidence that Defendant was aware that Officer Real was trying to contact him, and that Defendant's failure to make himself available for supervision was willful—Defendant simply preferred not to be arrested, and chose to avoid supervision. The evidence presented at the hearing was sufficient to reasonably satisfy the trial court, in the exercise of the judge's sound discretion, that Defendant "willfully avoid[ed] supervision and . . . willfully ma[de] his whereabouts unknown," and had therefore willfully absconded on 14 February 2019.

Defendant contends that the trial court's revocation of Defendant's probation was not consonant with this Court's decision in *Melton*. However, the facts of the instant case are readily distinguishable from the facts presented in *Melton*. To begin, Defendant did not merely fail to appear for a meeting with his probation officer, which

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would not generally amount to absconding. *Cf. State v. Williams*, 243 N.C. App. 198, 205, 776 S.E.2d 741, 745 (2015) (“Although the report alleged that [the] [d]efendant’s actions constituted ‘absconding supervision,’ this wording cannot convert violations of N.C. Gen. Stat. §§ 15A-1343(b)(2) and (3) into a violation of N.C. Gen. Stat. § 15A-1343(b)(3a).”). Moreover, the instant case does not present a simple failure to make contact with the probation officer, with no evidence of willfulness. *See, e.g., Melton*, 258 N.C. App. at 139, 811 S.E.2d at 682 (“[U]nlike in [a separate absconding case], where the defendant admitted he knew his probation officer attempted to contact him, the State failed to present competent evidence that [the] defendant’s failure to contact [her probation officer] from 2 November to 4 November 2016 was willful.”).

Here, the evidence indicates that Defendant failed to report to Officer Real in order to avoid the arrest ordered by Judge Nobles, and the likely revocation of his probation and the activation of his prison sentence. There was substantial evidence that on 14 February and 15 February 2019, facing the looming probability that he would be incarcerated, Defendant *willfully refused* to make himself available for supervision, rather than just missing an appointment and failing to make contact with his probation officer.

Defendant further contends that the trial court erred by considering events which occurred after the dates contained in the revocation report. After careful review, as explained *supra*, there was sufficient competent evidence to support the

trial court's determination that Defendant willfully absconded in violation of N.C. Gen. Stat. § 15A-1343(b)(3a) based on the dates alleged in the violation reports—14 February to 15 February 2019.

While not necessary to justify the trial court's determination that Defendant willfully intended to abscond, of which there was ample evidence, the measures that Defendant took after the dates alleged in the violation report lend support to the trial court's determination that Defendant willfully absconded. Over six weeks after he refused to appear at the probation office in Craven County, the Marshals located Defendant in Pitt County. During that period, Defendant had dramatically changed his appearance, cutting off his dreadlocks. Defendant had over \$30,000 cash in his apartment when he was apprehended. In addition, Defendant had obtained a Florida driver's license in the name of "Akiz Jackman," using a photograph of himself without the dreadlocks. Evidence of Defendant's actions after 15 February 2019, however, was superfluous to the trial court's determination.

Conclusion

We conclude that "there was sufficient competent evidence to establish [D]efendant's willful violation of N.C. Gen. Stat. § 15A-1343(b)(3a), a valid condition of his probation. Therefore, the trial court did not abuse its discretion in finding that [D]efendant willfully absconded from supervision, or in revoking his probation on that basis." *State v. Trent*, 254 N.C. App. 809, 821, 803 S.E.2d 224, 232 (2017) (citation

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omitted), *disc. review denied*, 370 N.C. 78, 809 S.E.2d 599 (2018). Accordingly, we affirm the trial court's judgment.

AFFIRMED.

Judges DILLON and HAMPSON concur.

Report per Rule 30(e).