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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-971

Filed: 1 September 2020

Cumberland County, No. 15 CRS 64909

STATE OF NORTH CAROLINA

v.

MONTEZ BROWN

Appeal by Defendant from Judgment entered 3 December 2018 by Judge James F. Ammons Jr. in Cumberland County Superior Court. Heard in the Court of Appeals 14 April 2020.

*Attorney General Joshua H. Stein, by Assistant Attorney General Robert C. Ennis, for the State.*

*Charlotte Gail Blake for defendant-appellant.*

HAMPSON, Judge.

**Factual and Procedural Background**

Montez Brown (Defendant) appeals from the trial court's "Judgment and Commitment upon Revocation of Probation" (Revocation Judgment) entered 3 December 2018 revoking his probation and activating his suspended sentence. The Record before us tends to show the following:

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On 14 June 2018, Defendant entered a guilty plea to Felony Breaking and Entering and Felony Larceny After Breaking and Entering. The trial court sentenced Defendant to two suspended terms of 6 to 17 months' imprisonment and placed him on supervised probation for 24 months. About three months later, on 28 September 2018, Defendant's probation officer, Donell Trusty (Officer Trusty), filed a Violation Report alleging Defendant had violated five conditions of his probation. The Violation Report alleged, *inter alia*, the following:

Of the conditions of probation imposed in that judgment, the defendant has 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 OR ABOUT 08/06/2018, THE OFFENDER LEFT HIS PLACE OF RESIDENCE AT 4309 BRAGG BLVD ROOM 236 FAYETTEVILLE, NC WITHOUT PRIOR APPROVAL OR KNOWLEDGE OF HIS PROBATION OFFICER AND FAILED TO MAKE HIS WHEREABOUTS KNOWN, MAKING HIMSELF UNAVAILABLE FOR SUPERVISION AND THEREBY ABSCONDING SUPERVISION. AS OF THE DATE OF THIS REPORT, THE OFFENDER[']S WHEREABOUTS ARE UNKNOWN AND ALL EFFORTS TO LOCATE THE OFFENDER HAVE BEEN UNSUCCESSFUL.

On 3 December 2018, the trial court conducted a probation-revocation hearing on Defendant's alleged probation violations. At the beginning of the hearing, Defendant's counsel admitted Defendant violated the terms of his probation as alleged in the Violation Report, including by absconding:

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THE COURT: . . . All right [Defendant] is on probation for larceny after breaking and entering and felony breaking and entering. [The Violation Report] says he has absconded, failed to contact his probation officer, behind in his money, and didn't do his substance abuse . . . .

THE COURT: Does he admit or deny these things?

DEFENSE [COUNSEL]: Your Honor, he admits them.

Counsel for Defendant further explained Defendant made calls to the probation department to check-in, but since he has never been on probation before, he was not fully aware of the requirement he had to physically check-in. Officer Trusty testified that he spoke "to the offender before on the telephone and gave him direct orders to report." He also went to Defendant's place of living and found "he was no longer living there, he was just gone." Officer Trusty explained Defendant "is well aware of where he is supposed to be and when he is supposed to be there," but he did not follow his probation orders.

At the conclusion of the hearing, the trial court orally rendered a finding Defendant had willfully violated the terms and conditions of his probation, "including that he has absconded," revoked Defendant's probation, and ordered Defendant's suspended sentences of 6 to 17 months be activated. On 13 December 2018, Defendant filed a timely *pro se* written Notice of Appeal; however, the Notice of Appeal did not identify the court and judgment from which Defendant was appealing. On 21 December 2018, Defendant filed a second written Notice of Appeal, this time identifying the relevant court and the judgment. On 2 December 2019, Defendant

filed a Petition for Writ of *Certiorari* to this Court seeking review of the Revocation Judgment.

### **Appellate Jurisdiction**

We note at the outset both of Defendant's Notices of Appeal do not comply with the requirements of Rule 4 of our Rules of Appellate Procedure. N.C.R. App. P. 4 (2019). Defendant's first Notice of Appeal, filed on 13 December 2018, lacked the court and judgment from which appeal is taken, which is required content of a notice of appeal. N.C.R. App. P. 4(b). Defendant's second Notice of Appeal identified this Court and the proper judgment but was filed on 21 December 2018, rendering it untimely. N.C.R. App. P. 4(a). Accordingly, on 2 December 2019, Defendant filed a Petition for Writ of *Certiorari* with this Court seeking review of the trial court's Revocation Judgment, even though the first Notice of Appeal lacked the required content and the second was filed more than fourteen days after entry of the Judgment.

Pursuant to Rule 21(a)(1) of our Appellate Rules, this Court possesses the authority to grant a petition for writ of *certiorari* and review an order or judgment entered by the trial court "when the right to prosecute an appeal has been lost by failure to take timely action . . . ." N.C.R. App. P. 21(a)(1). This Court has issued a writ of *certiorari* in the past despite technical defects in a notice of appeal by a *pro se* defendant in a variety of circumstances. *See, e.g., State v. Springle*, 244 N.C. App.

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760, 763, 781 S.E.2d 518, 521 (2016) (“[A] defect in a notice of appeal should not result in loss of the appeal as long as the intent to appeal can be fairly inferred from the notice and the appellee is not misled by the mistake.” (citations, quotation marks, and ellipsis omitted)). Here, we can infer the intent from both Notices of Appeal filed by Defendant. Further, the State does not contend it has been misled by Defendant’s faulty Notices of Appeal. Therefore, in our discretion, we grant Defendant’s Petition for Writ of *Certiorari*.

**Issue**

The sole issue on appeal is whether the trial court abused its discretion by revoking Defendant’s probation and activating his suspended sentence when the Violation Report alleged absconding and Defendant admitted to violating the terms of his probation as alleged in the Violation Report.

**Analysis**

**Standard of Review**

“[T]he decision of the trial court [to revoke probation] is reviewed for abuse of discretion.” *State v. Murchison*, 367 N.C. 461, 464, 758 S.E.2d 356, 358 (2014). “[W]here matters are left to the discretion of the trial court, appellate review is limited to a determination of whether there was a clear abuse of discretion.” *White v. White*, 312 N.C. 770, 777, 324 S.E.2d 829, 833 (1985). “A trial court abuses its discretion if its determination is ‘manifestly unsupported by reason’ and is ‘so

arbitrary that it could not have been the result of a reasoned decision.’ ” *State v. Lasiter*, 361 N.C. 299, 301-02, 643 S.E.2d 909, 911 (2007) (quoting *White*, 312 N.C. at 777, 324 S.E.2d at 833).

### Probation Revocation

A trial court may only revoke probation for a violation of a condition of probation when a defendant: (1) commits a new criminal offense, in violation of N.C. Gen. Stat. § 15A-1343(b)(1); (2) absconds, in violation of N.C. Gen. Stat. § 15A-1343(b)(3a); or (3) violates any condition of probation after previously serving two periods of confinement in response to violations, pursuant to N.C. Gen. Stat. § 15A-1344(d2). N.C. Gen. Stat. § 15A-1344(a) (2019). As a regular condition of probation, a defendant must “not abscond by willfully avoiding supervision or by willfully making the defendant’s whereabouts unknown to the supervising probation officer, if the defendant is placed on supervised probation.” N.C. Gen. Stat. § 15A-1343(b)(3a) (2019); *see also State v. Ramos*, 363 N.C. 352, 355, 678 S.E.2d 224, 226 (2009) (stating willfully means committing an act “purposely and deliberately in violation of law” (citation and quotation marks omitted)).

“In a hearing on a probation violation report, a defendant either ‘admits’ or ‘denies’ the allegations in the report.” *State v. Cleary*, 213 N.C. App. 198, 204, 712 S.E.2d 722, 727 (2011). In criminal-prosecution cases, our Supreme Court has stated when a defendant admits to facts in his testimony, such an admission “is binding in

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every sense, preventing the party who makes it from introducing evidence to dispute it, and relieving the opponent of the necessity of producing evidence to establish the admitted fact.” *State v. McWilliams*, 277 N.C. 680, 686, 178 S.E.2d 476, 480 (1971) (citations and quotation marks omitted).

In this case, the trial court did not abuse its discretion in revoking Defendant’s probation on the basis of absconding. The Violation Report, which was provided to Defendant, alleged Defendant absconded and specifically listed Section 15A-1343(b)(3a) as the condition violated. At the hearing, Defendant, through counsel, orally admitted to all the allegations stated in the Violation Report. Thus, the trial court did not abuse its discretion in revoking Defendant’s probation and finding Defendant had willfully absconded his probation. *See State v. Tennant*, 141 N.C. App. 524, 526, 540 S.E.2d 807, 808 (2000) (“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.” (citations and quotation marks omitted)).

Furthermore, “it is a defendant’s responsibility to keep his probation officer apprised of his whereabouts.” *State v. Newsome*, \_\_\_ N.C. App. \_\_\_, \_\_\_, 828 S.E.2d 495, 498 (2019) (citation and quotation marks omitted). Officer Trusty testified although this was Defendant’s first probation sentence, he had fully explained to Defendant the requirements of his probation and “where he is supposed to be and

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when he is supposed to be there.” When Officer Trusty went to Defendant’s supposed address, Defendant was nowhere to be found. Officer Trusty testified Defendant had departed from his listed address without prior approval and failed to make his whereabouts known. Therefore, the trial court did not abuse its discretion because there was competent evidence for the court to find Defendant had willfully absconded. *See State v. Trent*, 254 N.C. App. 809, 818, 803 S.E.2d 224, 230 (2017) (affirming a judgment revoking probation for absconding because the defendant’s probation officer was not aware of defendant’s whereabouts for sixteen days after defendant left his listed address).

Defendant contends the trial court abused its discretion by revoking his probation because the allegations in the Violation Report did not allege acts which, if proven, would support a finding Defendant absconded under N.C. Gen. Stat. § 15A-1343(b)(3a). Defendant argues *State v. Williams* supports his argument the trial court must consider the specific acts alleged in the Violation Report and not the language used to label those alleged actions. 243 N.C. App. 198, 205, 776 S.E.2d 741, 745 (2015). In *Williams*, the issue considered was whether the State produced sufficient evidence at the probation hearing to prove the allegation the defendant had absconded. *Id.* at 199, 776 S.E.2d at 742. At the revocation hearing, the defendant did not admit to absconding as alleged in the violation report and did not waive disclosure of the evidence to support the allegation. *Id.* In contrast, in the case *sub*



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*judice*, at the 3 December 2018 hearing, counsel for Defendant admitted Defendant absconded as alleged in the Violation Report. Moreover, the Violation Report specifically identified Section 15A-1343(b)(3a) as the condition allegedly violated, and the trial court found as a fact Defendant absconded. In *Williams*, the violation report in question did not reference Section 15A-1343(b)(3a), and, further, the trial court never made a specific finding that the defendant had willfully absconded. *Id.* at 203, 776 S.E.2d at 744.

Defendant also cites our Supreme Court's decision in *State v. Moore* in support of his argument. 370 N.C. 338, 807 S.E.2d 550 (2017). In *Moore*, the Court considered whether the defendant received adequate notice of his probation-revocation hearing in accordance with Section 15A-1345(e). *Id.* at 339, 807 S.E.2d at 551 (citing N.C. Gen. Stat. § 15A-1345(e)). The Court explained the defendant received notice of the specific behavior alleged to be in violation of his probation when the report included "a statement of pending criminal charges" and "notice of the factual allegations—the specific behavior—that constituted the violation was enough." *Id.* at 342, 807 S.E.2d at 553. Therefore, the Court held Section 15A-1345(e)'s notice requirement to be "satisfied by a statement of the actions that a defendant has allegedly taken that constitute a violation of a condition of probation." *Id.* at 345, 807 S.E.2d at 555.

In the present case, the Violation Report alleged Defendant left his residence without prior approval and failed to make his whereabouts known to his probation

officer. Officer Trusty testified at the revocation hearing Defendant departed from his listed address and failed to advise him of his whereabouts or remain in contact even though Defendant was “well aware of where he is supposed to be and when he is supposed to be there.” Furthermore, Defendant admitted to the violations alleged in the Violation Report, which specifically listed absconding, at his revocation hearing. Thus, under *Moore*, the trial court did not err by revoking probation based on Section 15A-1345(e) because sufficient notice was provided in the Violation Report—specific actions taken by Defendant were alleged and the condition, Section 15A-1343(b)(3a), was clearly identified. Therefore, the trial court did not abuse its discretion in finding Defendant willfully absconded from supervision or in revoking his probation on that basis. We affirm the trial court’s revocation of Defendant’s probation.

**Conclusion**

Accordingly, for the foregoing reasons, we affirm the trial court’s Revocation Judgment revoking Defendant’s probation and activating his suspended sentence.

AFFIRMED.

Judges STROUD and ARROWOOD concur.

Report per Rule 30(e).