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IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-604

No. COA20-902

Filed 2 November 2021

Burke County, Nos. 19 CRS 50420, 20 CRS 156

STATE OF NORTH CAROLINA

v.

JASON DAKOTA CAMPBELL

Appeal by defendant from judgments entered 17 August 2020 by Judge Daniel A. Kuehnert in Burke County Superior Court. Heard in the Court of Appeals 6 October 2021.

*Attorney General Joshua H. Stein, by Assistant Attorney General Jessica N. Price, for the State.*

*Willis Johnson Nelson, PLLC, by Drew Nelson, for defendant-appellant.*

ARROWOOD, Judge.

¶ 1

Jason Dakota Campbell (“defendant”) appeals from judgments entered upon two probation violations. Defendant contends the trial court lacked subject matter jurisdiction over defendant’s probation set by judgment in Catawba County. For the following reasons, we hold the trial court lacked subject matter jurisdiction in 20 CRS 156 and vacate the trial court’s order activating that sentence.

I. Background

¶ 2 On 10 September 2019, defendant was convicted on one count of larceny of a motor vehicle in Burke County Superior Court (“Burke County judgment”). Judge Athena Fox Brooks sentenced defendant to a suspended sentence of 8 to 19 months imprisonment and placed defendant on 24 months supervised probation, with terms including a substance abuse assessment and prohibition from contacting the State’s witnesses.

¶ 3 On 3 February 2020, defendant was convicted on one count of simple possession of a Schedule II substance in Catawba County Superior Court (“Catawba County judgment”). Judge Gregory R. Hayes sentenced defendant to a suspended sentence of 120 days imprisonment and placed defendant on 24 months supervised probation.

¶ 4 On 28 February 2020, Burke County probation officer Davina Evans (“Officer Evans”) issued two probation violation reports. The first report concerned defendant’s Burke County conviction and alleged that defendant had violated the terms of his probation by failing to make himself available for supervision. The second report concerned defendant’s Catawba County conviction and alleged that defendant was instructed to “contact his supervising officer upon release from jail and has failed to do so. As of this date . . . the officer has not heard from this offender and has no idea where to look for him since he had claimed he would be residing in

Catawba County.”

¶ 5

A probation violation hearing was conducted on 17 August 2020 in Burke County Superior Court, located in Morganton, Judge Daniel A. Kuehnert presiding. At the outset of the hearing, the prosecutor asked defendant’s trial counsel if defendant was prepared to “admit violating the terms and condition of his probation and willfulness thereof[,]” to which defendant’s trial counsel replied, “[h]e does.” Defendant’s trial counsel further confirmed that defendant’s admission applied to “the violations in both files[.]” Officer Evans testified that defendant “had failed to make himself available for supervision, and failed to report his whereabouts to make contact with the supervising officer, and failed to cooperate with supervision.” Officer Evans further testified that defendant “was ordered to comply with electronic monitoring and had failed to make himself available to be placed on the same by avoiding supervision[,]” in addition to violating his probation by way of monetary indebtedness and failure to comply with other probation conditions.

¶ 6

The prosecutor recommended that the trial court find defendant had absconded from supervision. Defendant denied that he had absconded, explaining that his “paperwork was supposed to get switched over to Catawba County,” and that he was not from Morganton. Defendant also stated that he contacted Officer Evans and that he wished to complete probation.

¶ 7

The trial court found “that there was absconding[,]” revoked probation, and

STATE V. CAMPBELL

2021-NCCOA-604

*Opinion of the Court*

activated the sentences in both cases. In the trial court’s written order activating the sentence in the Burke County judgment, 19 CRS 50420, the trial court found that defendant violated the five listed conditions of his probation as set out in the violation report, had waived a violation hearing, and admitted to the violations set forth in the report. In the order activating the sentence in the Catawba County judgment, 20 CRS 156, the trial court found that defendant violated the single condition of his probation as set out in the violation report, had waived a violation hearing, and admitted to the violation set forth in the report. The trial court checked the box indicating that the court was revoking defendant’s probation based on its finding that he had committed a new offense or absconded from supervision, “as set out above.”

¶ 8 Defendant gave oral notice of appeal at the conclusion of the hearing and filed written notice of appeal on 19 August 2020.

II. Discussion

¶ 9 Defendant contends the trial court lacked subject matter jurisdiction in case 20 CRS 156. We agree.

¶ 10 “[T]he issue of a court’s jurisdiction over a matter may be raised at any time, even for the first time on appeal or by a court *sua sponte*.” *State v. Webber*, 190 N.C. App. 649, 650, 660 S.E.2d 621, 622 (2008) (citation omitted). “A court’s jurisdiction to review a probationer’s compliance with the terms of his probation is limited by statute.” *State v. Burns*, 171 N.C. App. 759, 760, 615 S.E.2d 347, 348 (2005)

STATE V. CAMPBELL

2021-NCCOA-604

*Opinion of the Court*

(quotation marks omitted) (quoting *State v. Hicks*, 148 N.C. App. 203, 204, 557 S.E.2d 594, 595 (2001)). “[A]n appellate court necessarily conducts a statutory analysis when analyzing whether a trial court has subject matter jurisdiction in a probation revocation hearing, and thus conducts a *de novo* review.” *State v. Satanek*, 190 N.C. App. 653, 656, 660 S.E.2d 623, 625 (2008) (citation omitted). “Under a *de novo* review, the court considers the matter anew and freely substitutes its own judgment for that of the lower tribunal.” *State v. Williams*, 362 N.C. 628, 632-33, 669 S.E.2d 290, 294 (2008) (citation and quotation marks omitted).

¶ 11 N.C. Gen. Stat. § 15A-1344(a) sets out a trial court’s authority to alter or revoke probation:

Except as provided in subsection (a1) or (b), probation may be reduced, terminated, continued, extended, modified, or revoked by any judge entitled to sit in the court which imposed probation and who is resident or presiding in the district court district as defined in G.S. 7A-133 or superior court district or set of districts as defined in G.S. 7A-41.1, as the case may be, where the sentence of probation was imposed, where the probationer violates probation, or where the probationer resides.

N.C. Gen. Stat. § 15A-1344(a) (2019). If a trial court alters “or revokes probation outside the county where the judgment was entered, the clerk must send a copy of the order and any other records to the court where probation was originally imposed.”

N.C. Gen. Stat. § 15A-1344(c). The clerk must also “issue a commitment order and must file the order revoking probation and the commitment order, which will

STATE V. CAMPBELL

2021-NCCOA-604

*Opinion of the Court*

constitute sufficient permanent record of the proceeding in that court,” and “send a certified copy of the order revoking probation, the commitment order, and all other records pertaining thereto to the county of the original conviction to be filed with the original records.” N.C. Gen. Stat. § 15A-1344(c).

¶ 12 Defendant notes that there were no special conditions included in the Catawba County judgment establishing Burke County as the supervising county and that the record contains no documents indicating that defendant’s probation was transferred to Burke County. Accordingly, defendant argues that in order for the trial court to have subject matter jurisdiction over the Catawba County judgment, the evidence must have demonstrated that defendant either violated the terms of his probation in the Catawba County judgment while in Burke County or residing in Burke County.

¶ 13 By contrast, the State argues that because the trial court had subject matter jurisdiction to hold a probation revocation hearing regarding the Burke County judgment “and N.C. Gen. Stat. § 15A-1344(c) provides statutory authority for Courts to review and revoke probation that originated in a different county,” the trial court also had subject matter jurisdiction to review the Catawba County judgment.

¶ 14 The State misapprehends the effect of N.C. Gen. Stat. § 15A-1344(c). This subsection addresses the *procedures* required for trial courts altering or revoking probation originating in a different county, and does not provide the trial court authority to review and revoke probation that originated in a different county as the

STATE V. CAMPBELL

2021-NCCOA-604

*Opinion of the Court*

State contends. The trial court's *authority* is expressly set out in N.C. Gen. Stat. § 15A-1344(a).

¶ 15 The trial court would have subject matter jurisdiction over the Catawba County judgment upon a showing that defendant violated the terms of his probation in the Catawba County judgment while in Burke County or that defendant was a resident of Burke County. The record and hearing transcript reflect that defendant was a resident of Catawba County, not Burke County, and no evidence was presented to show that defendant violated the terms of his probation while in Burke County. Accordingly, the trial court did not have subject matter jurisdiction or authority to revoke defendant's probation in the Catawba County judgment, and the trial court's order activating defendant's sentence in the Catawba County judgment is vacated.

¶ 16 Defendant also presents an argument alleging a clerical error in the written judgments. Because we vacate the trial court's order for lack of subject matter jurisdiction, we need not address defendant's remaining argument.

III. Conclusion

¶ 17 For the foregoing reasons, we hold that the trial court lacked subject matter jurisdiction over the Catawba County judgment, and the order activating defendant's sentence in 20 CRS 156 is vacated.

VACATED.

Judges DIETZ and HAMPSON concur.

STATE V. CAMPBELL

2021-NCCOA-604

*Opinion of the Court*

Report per Rule 30(e).