IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-520

No. COA21-14

Filed 21 September 2021

Beaufort County, Nos. 16CRS051737, 16CRS051742, 16CRS051744, 16CRS051747, 16CRS051750

STATE OF NORTH CAROLINA

v.

JADA WOOLARD, Defendant.

Appeal by Defendant from judgments entered on 18 August 2020 by Judge Alma L. Hinton in Beaufort County Superior Court. Heard in the Court of Appeals 11 August 2021.

Attorney General Joshua H. Stein, by Assistant Attorney General Alan D. McInnes, for the State.

Benjamin J. Kull for the Defendant.

JACKSON, Judge.

¶ 1 Jada Woolard ("Defendant") appeals from judgments revoking her probation and invoking her sentences in five felony cases. After review and consideration of the record and briefs, we affirm the revocation of Defendant's probation and the activation of her suspended sentences, but remand for the limited purpose of correcting a clerical error on the judgments.

I. Background

¶ 2 On 7 August 2017, Defendant was sentenced in a total of five different cases involving breaking and entering motor vehicles in Beaufort County. After her pleas of guilty in both 16CRS051737 and 16CRS051742, she was sentenced on one count of felony breaking or entering a motor vehicle and one count of misdemeanor larceny to five to 15 months incarceration, which was suspended for 24 months of supervised probation. The sentence in 16CRS051742 ran consecutively to the sentence imposed in 16CRS051737. Defendant was also ordered to pay costs and fees in both cases. In three other cases—16CRS051744, 16CRS051747, and 16CRS051750—the matters were consolidated for judgment. In both 16CRS051744 and 16CRS051747, Defendant was sentenced on one count of felony breaking or entering a motor vehicle. In 16CRS051750, she was sentenced on two counts of felony breaking or entering a motor vehicle and one count of felony attempted breaking or entering a building. On the consolidated judgment, Defendant was sentenced to five to 15 months incarceration, suspended for 24 months of supervised probation. This sentence ran consecutively to the sentence imposed in 16CRS051742. She was ordered to pay costs and fees in these cases as well.

¶ 3 Within three weeks of the sentencing, Defendant was cited for two separate curfew violations and a violation report was later filed on 21 December 2017. Another violation report was filed on 13 April 2018 as Defendant tested positive for marijuana,

missed a drug screen, and failed to attend two office meetings. After a hearing, Defendant was found to have violated her probation and it was modified on 7 May 2018. Over the next two years, Defendant had several additional probation violations for using marijuana and cocaine, missing appointments with her probation officer, failing to pay court costs, missing curfew, and failing to charge her monitoring device. Finally, on 24 July 2020, three violation reports were filed and scheduled for hearing in Superior Court in August 2020.

¶ 4 At the 18 August 2020 revocation hearing, the State's only witness was Probation Officer M. Anthony ("Officer Anthony"). Officer Anthony started working on Defendant's case in October 2018 and according to her, the revocation hearing was the tenth time she had been to court for a matter involving Defendant. Officer Anthony provided the trial court with a detailed summary of the events leading up to the hearing.

¶ 5 The State's evidence tended to show that in June 2020, Defendant had been living with a friend on Magnolia School Road in Beaufort County, but after an argument between the two, Defendant moved out. On 23 June 2020, Defendant informed Officer Anthony that she had moved into her mother's home on Washington Street. On 24 June 2020, Officer Anthony followed up and met with Defendant in person at her mother's house. Defendant told Officer Anthony that she would "most likely" be moving in with her father, who himself had just moved to the area from

Raleigh. Defendant said she would let Officer Anthony know by that Friday, 26 June 2020, exactly where she planned to live. Officer Anthony testified that she never heard back from Defendant.

¶ 6 After three weeks of no communication, on 15 July 2020, Officer Anthony contacted Defendant by text message. At first, Defendant responded "very quickly" to Officer Anthony's texts. Defendant told Officer Anthony that she would be staying at her mother's residence until August. Officer Anthony responded by texting that she would visit Defendant at her mother's home the next day, 16 July 2020, at 10:00 a.m. Despite responding quickly to the other messages, Defendant did not respond to Officer Anthony regarding the proposed meeting. Officer Anthony sent Defendant a follow-up text at 9:16 p.m. to try and confirm the meeting. Defendant failed to respond to that message as well.

¶ 7 The next morning, on 16 July 2020, Officer Anthony learned that Defendant had an unserved arrest warrant for a misdemeanor larceny charge out of Pitt County. Consequently, when she went to meet with Defendant at her mother's residence, Officer Anthony brought along other colleagues to serve that unserved warrant. Upon arriving at Defendant's mother's house around 10:00 a.m., Officer Anthony and her colleagues believed they saw a vehicle leaving the house as they were approaching. Defendant's little brother answered the door and Officer Anthony surmised he was 12 or 13 years old. He told the officers that Defendant was not there

and that she "was out riding around." When Officer Anthony tried calling Defendant there was no response, and she was not able to leave a voicemail at that time.

¶ 8 Later on 16 July 2020, Officer Anthony called Defendant again. This time, an unidentified woman answered Defendant's phone. The unidentified woman said that Defendant had left her phone in this woman's car. Officer Anthony asked if she knew where Defendant was; the woman replied that "she was at some store." Officer Anthony told the unidentified woman that Defendant had missed an appointment that morning and that she needed to speak with her. According to Officer Anthony, the woman said: "I will see to [sic] her soon and be able to get her phone to her and I will tell her that she missed her appointment."

¶ 9 The next day, Friday, 17 July 2020, Officer Anthony texted Defendant, asking her once again to call her back; Office Anthony received no reply. She also left a voicemail for Defendant's mother, stating that she was looking for her daughter and asking the mother to call her back; she received no reply. Officer Anthony also called Defendant's treatment provider to try and meet Defendant at an appointment. Pursuant to the prior probation modifications from May 2018, Defendant was to remain in treatment at this provider until discharged. Officer Anthony testified that she was told by the provider that Defendant had not returned for treatment since October 2019 and she had no appointments currently scheduled.

¶ 10 Three days later, on Monday, 20 July 2020, Officer Anthony tried to call

Defendant once again. This time Defendant's number was disconnected. Officer Anthony tried calling a friend of Defendant's, but that number was disconnected or changed as well. Officer Anthony also left another voicemail for Defendant's mother, asking her to return the call. Officer Anthony said that Defendant's mother was familiar with the officer and "typically always calls me back." Neither Defendant nor her mother called Officer Anthony back.

¶ 11 The next day, 21 July 2020, Defendant had a District Court hearing in Beaufort County for misdemeanor possession of marijuana. Officer Anthony notified the clerk's office and bailiffs she was trying to locate Defendant. When Officer Anthony herself went to the courthouse that day to look for Defendant, she learned Defendant had not attended the hearing and a warrant had been issued for failure to appear.

¶ 12 On 22 July 2020, Officer Anthony learned that Defendant had two additional outstanding warrants for her arrest from Pitt County. The charges were for assault by pointing a gun, assault with a deadly weapon, conspiracy to commit robbery with a dangerous weapon, and attempted robbery with a dangerous weapon. Officer Anthony tried calling Defendant again, but the number was still disconnected. Officer Anthony also called Defendant's old roommate, but the roommate had not seen Defendant since she had moved out the previous month. Later that same day, Officer Anthony went back to Defendant's mother's house. Defendant's mother was

home and said that she had not seen Defendant "for weeks now" and told Officer Anthony that "she's not living there." Defendant's mother also said Defendant had changed her phone number and her mother did not know how to reach Defendant. Officer Anthony testified that "at that point, that's what I needed for her not being at the residence and went ahead and started putting my violation report together to have her listed as an absconder."

¶ 13 On 23 July 2020, Officer Anthony tried to call Defendant one more time, but Defendant's number was still disconnected. Officer Anthony further testified that on 24 July 2020 she learned that Defendant had been arrested on the outstanding warrants. There was no definitive evidence at the hearing as to the actual date Defendant was arrested, but during counsel's cross examination of Officer Anthony, she stated it would not have surprised her if Defendant had been arrested on 21 July 2020.

¶ 14 No other witnesses testified after Officer Anthony finished her testimony. Defendant presented no witnesses or evidence at the revocation hearing. At the conclusion of the hearing, after arguments by both attorneys, the trial court summarized the evidence before it and revoked Defendant's probation based on its conclusion that she "was willfully avoiding contact." The trial court certified written judgments the same day, 18 August 2020. Defendant entered timely written notice of appeal on 24 August 2020.

II. Analysis

¶ 15 Defendant makes essentially two arguments on appeal: (1) that the trial court abused its discretion in revoking her probation for absconding and (2) that the written judgment contained findings that the trial court never made. We address each argument in turn.

A. Probation Revocation

¶ 16 Before revoking a defendant's probation, a hearing must be held to determine whether the defendant's probation should be revoked, unless the defendant waives the hearing. N.C. Gen. Stat. § 15A-1345(e) (2019). A trial court may only revoke probation and activate a defendant's suspended sentence if the defendant: (1) commits a new criminal offense in violation of N.C. Gen. Stat. § 15A-1343(b)(1); (2) absconds supervision in violation of N.C. Gen. Stat. § 15A-1343(b)(3a); or, (3) violates a condition of probation after serving two prior periods of confinement in response to violations under N.C. Gen. Stat. § 15A-1344(d2). *Id.* § 15A-1344(a).

¶ 17 Generally, "[w]e review a trial court's decision to revoke a defendant's probation for abuse of discretion. A trial court abuses its discretion when a ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision." *State v. Melton*, 258 N.C. App. 134, 136, 811 S.E.2d 678, 680 (2018) (internal marks and citations omitted). Furthermore, a violation of a condition of probation "need not be proven beyond a reasonable doubt" but only to the

trial judge's reasonable satisfaction in the exercise of his sound discretion. *State v. Murchison*, 367 N.C. 461, 464, 758 S.E.2d 356, 358 (2014).

¶ 18 In her brief, Defendant contends that there was insufficient evidence of absconding, and that her failure to show up for a visit and communicate for several days did not amount to a revocable offense. Defendant argues that her conduct amounted at most to a nonrevocable violation of her probation for failure to report.

¶ 19 In 2011, the North Carolina General Assembly passed The Justice Reinvestment Act of 2011 ("JRA") bringing major changes to the law of sentencing and corrections in North Carolina. 2011 S.L. 192, § 4. Included in these changes was the creation of a new condition of probation: not to abscond supervision. *State v. Nolen*, 228 N.C. App. 203, 205, 743 S.E.2d 729, 730 (2013). Thus, since the JRA became effective in 2011 there are two types of probation violations that a defendant might face based on similar allegations of not making oneself available for supervision: failure to report and absconding.

¶ 20 A violation for failure to report includes conduct like failing to attend meetings with a probation officer, failing to "answer all reasonable inquiries by the officer," and failing to report "any change in address." N.C. Gen. Stat. § 15A-1343(b)(3) (2019). Under the JRA, simple failure to report *is not* a cause to revoke probation, although it might result in other negative consequences like confinement in response to violation. *See id.* § 15A-1344(d), (d2).

¶ 21 Absconding is defined as "willfully avoiding supervision or . . . willfully making the defendant's whereabouts unknown to the supervising probation officer." *Id.* § 15A-1343(b)(3a). Unlike the less severe failure to report violation, absconding *is* cause to revoke probation. *Id.* § 15A-1344(a). The JRA codified absconding as a new violation and the legislature specifically said that probationers who "abscond" under § 15A-1343(b)(3a) on or after 1 December 2011 may have their probation revoked. *Nolen*, 228 N.C. App. at 205, 743 S.E.2d at 730.

¶ 22 "Prior to the JRA, courts used the term abscond informally to describe violations" of the requirements to "remain within the jurisdiction of the court" and "report as directed to the probation officer." *State v. Johnson*, 254 N.C. App. 535, 540, 803 S.E.2d 827, 830 (2017) (internal marks and citations omitted). The JRA eliminated this informal basis of absconding and instead formalized and defined absconding narrowly to constitute willfully avoiding supervision. *Id.* Notably, since the JRA went into effect, this Court has held that the State "cannot convert" failure to report violations into absconding violations—"merely failing to report for an office visit does not, without more, violate [the absconding statute]." *State v. Williams*, 243 N.C. App. 198, 205, 776 S.E.2d 741, 745 (2015); *State v. Newsome*, 264 N.C. App. 659, 662, 828 S.E.2d 495, 498 (2019) (citation omitted).

¶ 23 This case, however, is not a simple failure to report case. Here, we agree with the State that there is sufficient evidence of absconding by Defendant, which amounts to more than merely failure to report.

¶ 24 Establishing a defendant's willful intent "is seldom provable by direct evidence and must usually be shown through circumstantial evidence." *State v. Walston*, 140 N.C. App. 327, 332, 536 S.E.2d 630, 633 (2000) (citation omitted). "In determining the presence or absence of the element of intent, the fact finder may consider the acts and conduct of the defendant and general circumstances existing at the time of the charged probation violation." *State v. Crompton*, 270 N.C. App. 439, 443, 842 S.E.2d 106, 110 (2020). In this case, Defendant's acts and conduct from 15 July to 21 July 2020 demonstrate her willful intent to avoid supervision or make her whereabouts unknown to Officer Anthony. Over this seven-day period,[1] Defendant missed one scheduled meeting with her probation officer; she failed to respond to at least three calls from Officer Anthony; she failed to respond to at least three text messages from Officer Anthony; she failed to respond to three calls and voicemails placed to her

[1] Although Defendant did not present definitive evidence to prove she was arrested on 21 July 2020 in Pitt County, we will accept Defendant's contention as fact, thereby making the relevant period for absconding 15 July to 21 July 2020, because doing so will not change our decision. If we were to end the relevant period on 24 July when Officer Anthony learned of Defendant's arrest and filed the violation report, then Officer Anthony's attempts to contact Defendant would include two more phone calls, a phone call to her former roommate, and another visit to her mother's house.

mother and friend; and she failed to appear at a court hearing. Further, on 15 July 2020, Defendant told Officer Anthony she would be staying at her mother's house until August. Her mother contradicted this claim on 22 July 2020 by informing Officer Anthony that Defendant did not live there and that she had, in fact, not seen Defendant "for weeks."

¶ 25 Defendant relies heavily on *State v. Melton*, 258 N.C. App. 134, 811 S.E.2d 678 (2018), to argue that Officer Anthony's failed attempts to contact Defendant do not amount to absconding, but this case is distinguishable for several reasons. In *Melton*, the alleged absconding only occurred "over the course of two days" during which the probation officer was unable to reach or find the defendant at home. *Id.* at 138, 811 S.E.2d at 681. "However, on cross-examination, [the officer] could not support her testimony with records" and could not indicate how many times she called, how many messages she sent, or what were the dates and times she went to the defendant's residence. *Id.* at 138–39, 811 S.E.2d at 681–82. The defendant also testified in *Melton*, saying that her phone was missing for two days, that she was not at home at the time the officer visited, and that the officer left no messages at her home. *Id.* at 139, 811 S.E.2d at 682. Accordingly, we held that "this case does not support a judgment of revocation" given that "the probation officer could not testify with any specificity and did not have any records regarding her attempts to locate defendant during that two-day period." *Id.* at 140, 811 S.E.2d at 683.

¶ 26 Here, in contrast, Officer Anthony attempted to contact Defendant for at least six days. Further, Officer Anthony's testimony was detailed and specific about the times and dates on which she tried to contact Defendant, the visit she made where Defendant had claimed to be staying, the calls she placed to Defendant's mother and friend, and the attempts to locate Defendant at her treatment provider and court hearing. Given this testimony, the trial judge's decision to revoke Defendant's probation was neither arbitrary nor manifestly unsupported by reason. We therefore hold that the trial court did not abuse its discretion in revoking Defendant's probation for absconding.

B. Improper Findings

¶ 27 In her second argument on appeal, Defendant argues that the judgments should be reversed because the trial court's written orders included certain findings that the trial court did not announce orally at the close of the hearing. This argument is without merit, for it is established precedent that "the written and entered order or judgment controls over an oral rendition of that order or judgment." *In re O.D.S.*, 247 N.C. App. 711, 721, 786 S.E.2d 410, 417 (2016).

¶ 28 Defendant also argues that portions of the written findings lack evidentiary support. On the judgment forms, the trial court found that Defendant violated her probation by (1) absconding; (2) failing to report by missing an appointment; (3) failing to pay court fees; (4) failing to report a new address; (5) committing new

criminal offenses; and (6) failing to attend treatment as ordered. Defendant argues that no evidence was presented at trial to support the findings other than absconding. Of course, even if this were true, it does not change the result in her case, because, as discussed above, evidence of absconding alone is sufficient to revoke probation. Any alleged error for including these other findings in the judgments would amount to a harmless error at most.

¶ 29 However, box four in the findings section on each of the judgment forms is checked, indicating, "Each violation is, in and of itself, a sufficient basis upon which this Court should revoke probation and activate the suspended sentence." Under the JRA, probation may only be revoked for commission of a new criminal offense, two prior periods of confinement in response to violations, or absconding. N.C. Gen. Stat. § 15A-1344(a) (2019). Here, the trial court erred in checking box four on the judgment forms as most of the violations other than absconding are an insufficient basis, in and of themselves, upon which to revoke probation.[2] The State did not present evidence of the one exception, commission of new criminal offenses, and therefore box four should not have been checked for that violation either. "When a trial court incorrectly

[2] Specifically, on the judgment forms, the trial court found Defendant violated the conditions of her probation as set forth in paragraphs one through seven of the 24 July 2020 violation report for 16CRS051737; as set forth in paragraphs one through six of the 24 July 2020 violation report for 16CRS051742; and as set forth in paragraphs one through six of the 24 July 2020 violation report for 16CRS051744, 16CRS051747, and 16CRS051750.

checks a box on a judgment form that contradicts its findings and the mistake is supported by the evidence in the record, we may remand for correction of this clerical error in the judgments." *State v. Newsome*, 264 N.C. App. 659, 665, 828 S.E.2d 495, 500 (2019). We therefore remand to the trial court to correct the clerical errors on the judgments.

III. Conclusion

¶ 30 For the reasons stated above, we hold that the trial court did not abuse its discretion by revoking Defendant's probation for absconding. The judgments, however, do contain clerical errors. Thus, we remand the matter to the trial court for the limited purpose of correcting the judgments.

AFFIRMED; REMANDED FOR CORRECTION OF CLERICAL ERROR.

Judges ZACHARY and HAMPSON concur.

Report per Rule 30(e).