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NO. COA11-394  
NORTH CAROLINA COURT OF APPEALS

Filed: 7 February 2012

STATE OF NORTH CAROLINA

v. Craven County  
No. 05 CRS 53027

VANESSA MARIE KAHLEY,  
Defendant.

Appeal by defendant from judgment entered 26 July 2010 by Judge Benjamin G. Alford in Craven County Superior Court. Heard in the Court of Appeals 16 November 2011.

*Attorney General Roy Cooper, by Assistant Attorney General Larissa S. Williamson, for the State.*

*Paul Y.K. Castle for defendant-appellant.*

HUNTER, Robert C., Judge.

Vanessa Marie Kahley ("defendant") appeals from judgment entered on 26 July 2010 by the Honorable Benjamin Alford in Craven County Superior Court. Defendant was found to be in willful violation of the terms of her probation, and as such, her probation was revoked and her original sentence was activated. Defendant argues the trial court erred in allowing

her to proceed *pro se* because the trial court failed to make the statutorily required inquiry to ensure defendant knowingly, intelligently, and voluntarily waived her right to counsel. Defendant also argues that the trial court erred by failing to give defendant the statutorily required notice of her hearing, including a statement of the violations alleged. After careful review, we find no error.

#### Background

On 24 July 2007, defendant pled guilty to one count of failure to register as a sex offender in Craven County Superior Court. Defendant was sentenced to a minimum term of twenty-one (21) months and a maximum term of twenty-six (26) months, but execution of the sentence was suspended and defendant was instead placed on supervised probation for a period of thirty-six (36) months.

On 8 March 2010, Probation Officer Tammy Edwards filed a violation report alleging that defendant willfully violated two conditions of her probation. The first violation was defendant's failure to pay \$955.00 in arrearages. The second violation included defendant's convictions in Kentucky for shoplifting, nine counts of theft by deception, and driving under the influence.

A probation violation hearing was held on 26 July 2010.

The following colloquy took place during the hearing:

THE COURT: . . . . If you're found to have willfully violated your probation you could be ordered to serve that 21-26 month sentence.

You have a right to have a lawyer help you with your case. If you can't afford it I would appoint one to represent you.

Do you understand those rights?

DEFENDANT: Yes, sir.

THE COURT: Do you wish to proceed with a lawyer or without?

DEFENDANT: Without, sir. My probation was over July 17th.

THE COURT: Well, if the violation was filed and served upon you before that, that doesn't make any difference. Does that change your decision about whether you wish to proceed with a lawyer or not?

DEFENDANT: I'm okay, sir. Too sick to deal with -- wait for a lawyer. I'll proceed.

THE COURT: Step over and sign a waiver of your right to proceed without counsel and be sworn to it.

The State then asked defendant if she received a copy of her violation report as there was "no signature on it." Defendant replied by stating, "All my fine monies and everything all been paid."

During the hearing, defendant's probation officer recommended that defendant's probation be revoked based on defendant's convictions in Kentucky even though the money she owed from her original case had been paid by defendant's family. In its judgment, the trial court found that defendant violated the specific conditions of her probation as alleged in the violation report and activated the suspended sentence. Defendant appeals.

#### Discussion

Defendant first argues that the trial court failed to conduct a proper inquiry of whether defendant may be permitted to proceed without the assistance of counsel as required by N.C. Gen. Stat. § 15A-1242 (2009) and, as such, did not ensure that defendant's waiver of counsel was knowing, intelligent, and voluntary. This Court generally reviews alleged violations of N.C. Gen. Stat. § 15A-1242 *de novo*. *State v. Watlington*, \_\_ N.C. App. \_\_, \_\_, 716 S.E.2d 671, 675 (2011).

It is well settled that a defendant may proceed in a trial without the assistance of counsel. *See State v. Brooks*, 138 N.C. App. 185, 193, 530 S.E.2d 849, 854 (2000). However, the defendant must "clearly and unequivocally" waive his right to counsel and the trial court must determine whether "the

defendant knowingly, intelligently, and voluntarily" waived his right. *State v. Carter*, 338 N.C. 569, 581, 451 S.E.2d 157, 163 (1994) (citation and quotation marks omitted). The inquiry made by the trial court must satisfy N.C. Gen. Stat. § 15A-1242, which states:

A defendant may be permitted at his election to proceed in the trial of his case without the assistance of counsel only after the trial judge makes thorough inquiry and is satisfied that the defendant:

- (1) Has been clearly advised of his right to the assistance of counsel, including his right to the assignment of counsel when he is so entitled;
- (2) Understands and appreciates the consequences of this decision; and
- (3) Comprehends the nature of the charges and proceedings and the range of permissible punishments.

Defendant concedes that the first and third requirements were likely satisfied by the trial court but argues that the second condition was not because the trial judge "did not utter a single word to [defendant] about what she might have to expect or how she would have to conduct herself during the hearing if she proceeded *pro se*."

In *State v. Whitfield*, 170 N.C. App. 618, 620, 613 S.E.2d 289, 291 (2005), the defendant argued the following inquiry failed to satisfy N.C. Gen. Stat. § 15A-1242:

THE COURT: All right. Ms. Whitfield, do you understand that you have possibly 11 to 15 months hanging over your head?

DEFENDANT: Yes, ma'am.

THE COURT: You understand that?

DEFENDANT: Yes, ma'am.

THE COURT: If your probation is revoked, you may very well have your sentence activated, have to serve that time. You're entitled to have an attorney to represent you. Are you going to hire an attorney to represent you, represent yourself, or ask for a court appointed attorney[?] [O]f those three choices, which choice do you make?

DEFENDANT: Represent myself.

THE COURT: Put your left hand on the Bible and raise your right hand.

(The Defendant was sworn by the Court)

THE COURT: That is what you want to do, so help you God?

DEFENDANT: Yes, ma'am.

*Id.* at 621, 613 S.E.2d at 291.

This Court concluded that the trial judge "did make the appropriate inquiry as to whether [the] defendant's waiver was knowing, intelligent, and voluntary" and "followed all three

requirements set forth in N.C. Gen. Stat. § 15A-1242.” *Id.* The inquiry in *Whitfield* was nearly identical to the one conducted by the trial judge in the present case. In both cases, the trial judge informed the defendant of her right to a lawyer, explained that if the defendant was found to have violated probation they may have to serve their original sentence, and indicated the sentence that the defendant would be facing. *Id.* As we discern no meaningful distinction between the inquiry in *Whitfield* and the inquiry in the present case, we conclude the trial court did not err.

Defendant attempts to distinguish *Whitfield* from the present case by pointing out that the defendant in *Whitfield* made a motion to continue her hearing after waiving her right to counsel thereby indicating her understanding of the proceedings and her ability to represent herself. 170 N.C. App. at 622, 613 S.E.2d at 292. We reject defendant’s argument as the *Whitfield* Court did not hold that making such a motion is necessary to satisfy the requirements of N.C. Gen. Stat. § 15A-1242.

We also reject defendant’s reliance on *State v. Evans*, 153 N.C. App. 313, 569 S.E.2d 673 (2002), to support her contention that the requirements of N.C. Gen. Stat. § 15A-1242 were not met. *Evans* is distinguishable as there the trial court’s

colloquy omitted the second and third requirements of N.C. Gen. Stat. § 15A-1242. *Id.* at 316, 569 S.E.2d at 675. Accordingly, we hold the trial court did not err in allowing defendant to proceed *pro se*.

Defendant next argues that the trial court did not have jurisdiction over her probation revocation hearing because it did not meet the requirements of N.C. Gen. Stat. § 15A-1345(e) (2009), which states: "[t]he State must give the probationer notice of the hearing and its purpose, including a statement of the violations alleged. The notice, unless waived by the probationer, must be given at least 24 hours before the hearing." Defendant points to the fact that the violation report filed against her did not contain her signature, suggesting that defendant was not served with it prior to the hearing.

Here, defendant was served with an arrest order on 28 June 2010, which was nearly one month before her hearing on 26 July 2010. The arrest order served on defendant stated the following: "the probation officer has provided the court with a written statement, signed by the probation officer, alleging that the defendant has violated specified conditions of the defendant's probation and a copy of the written statement is

attached." Assuming, *arguendo*, that defendant did not receive her violation report, based on this Court's decisions in *State v. Baines*, 40 N.C. App. 545, 550-51, 253 S.E.2d 300, 303-04 (1979) and *State v. Gamble*, 50 N.C. App. 658, 659-60, 274 S.E.2d 874, 875 (1981), her arrest order provided sufficient notice to satisfy the requirements of N.C. Gen. Stat. § 15A-1345(e).

In sum, the trial court did not err by allowing defendant to proceed without counsel at her probation revocation hearing as the inquiry conducted by the trial judge was sufficient to satisfy N.C. Gen. Stat. § 15A-1242. Likewise, defendant's arrest order provided defendant with sufficient notice as required by N.C. Gen. Stat. § 15A-1345(e). We find no error.

No error.

Judges GEER and HUNTER, Jr., Robert N., concur.

Report per Rule 30(e).