

NO. COA08-940

NORTH CAROLINA COURT OF APPEALS

Filed: 21 April 2009

STATE OF NORTH CAROLINA

v.

Durham County
No. 07 CRS 46547

DONALD LAMOND

Appeal by defendant from judgment entered 30 January 2008 by Judge Ronald L. Stephens in Durham County Superior Court. Heard in the Court of Appeals 6 April 2009.

Court of Appeals

Attorney General Roy Cooper, by Assistant Attorney General Donna D. Smith, for the State.

Don Willey, for defendant-appellant.

Slip Opinion

STEELMAN, Judge.

Where the trial court failed to enter the required findings of fact necessary to impose a probationary period longer than eighteen months, the judgment is vacated and this case is remanded for resentencing.

I. Factual and Procedural Background

Defendant was charged with simple assault, and was found guilty by a jury on 30 January 2008. The trial court imposed a community based punishment and sentenced defendant to forty-five days imprisonment. This sentence was suspended and defendant was placed on supervised probation for twenty-four months. Defendant appeals.

II. Required Findings of Fact

In his only argument, defendant contends that the trial court erred in placing him on probation for twenty-four months without making the findings required by N.C. Gen. Stat. § 15A-1343.2(d). The State concedes this error and we agree.

N.C. Gen. Stat. § 15A-1343.2(d) provides, in part, that “[u]nless the court makes specific findings that longer or shorter periods of probation are necessary,” the length of probation for misdemeanants sentenced to community punishment shall be “not less than six nor more than 18 months[.]” N.C. Gen. Stat. § 15A-1343.2(d)(1) (2007). The judgment contains no finding supporting the twenty-four month period of probation. Nor does the trial transcript indicate that the trial court verbally made any such finding.

The judgment is vacated and this matter is remanded to the trial court for a new sentencing hearing.

Defendant does not argue his remaining assignments of error, and they are deemed abandoned. N.C.R. App. P. 28(b)(6) (2008).

NO ERROR AS TO TRIAL, JUDGMENT VACATED AND REMANDED FOR A NEW SENTENCING HEARING.

Chief Judge MARTIN and Judge CALABRIA concur.