

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA14-666

Filed: 3 March 2015

IN THE MATTER OF:

Cumberland County

No. 11 JB 291

D.S.B.

Appeal by juvenile from order entered 3 March 2014 by Judge Toni S. King in Cumberland County District Court. Heard in the Court of Appeals 4 December 2014.

Attorney General Roy Cooper, by Assistant Attorney General Kimberly N. Callahan, for the State.

Mary McCullers Reece for the juvenile.

STEELMAN, Judge.

Where the juvenile was adjudicated delinquent for commission of a class H felony, and received a Level II probationary disposition, the trial court had authority to impose a Level III disposition upon finding, after notice and a hearing, that the juvenile had violated the conditions of probation. Where the motion for review asserted that the juvenile had violated the conditions of probation, accurately stated the date the probation would expire, and listed violations occurring after the juvenile was placed on the probation with the specified expiration date, the motion for review adequately notified the juvenile of his probationary status, even though the motion

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for review contained a clerical error in that it referenced an earlier expired term of probation. Even assuming, *arguendo*, that, because the motion for review incorrectly referenced an expired term of probation based on commission of a misdemeanor, the motion for review did not provide the juvenile with notice that he could receive a Level III disposition for violation of his probation, the record establishes that the juvenile had actual notice that a Level III disposition was possible.

I. Factual and Procedural History

On 12 May 2011 a juvenile petition was filed against D.S.B., alleging that he had committed the offense of disorderly conduct, a Class 2 misdemeanor. On 8 August 2011 Judge John Dickson adjudicated D.S.B. delinquent for that offense, and on 1 September 2011 Judge Dickson entered a Level 1 disposition order, placing D.S.B. on probation for one year, subject to certain conditions. On 19 September 2011 a motion for review was filed, alleging that D.S.B. had violated the conditions of his probation by being suspended from school. D.S.B. admitted the violation at a hearing conducted on 18 October 2011, and on 8 November 2011 Judge Dickson entered a Level 2 disposition order placing D.S.B. on probation for a period of one year beginning 18 October 2011. On 24 July 2012, prior to the expiration of this probation, a motion for review was filed, alleging that D.S.B. had violated the conditions of probation. D.S.B. admitted the new violations at a hearing on 20 August 2012, and on 30 August 2012 Judge Dickson ordered D.S.B. “placed on a new Level II probation for one year” beginning on 20 August 2012.

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On 22 February 2013 a juvenile petition was filed alleging that D.S.B. had possessed drug paraphernalia. A second petition was filed on 17 April 2013 alleging that D.S.B. had committed the offense of robbery with a dangerous weapon, and a third petition was filed 3 May 2013, alleging that D.S.B. had committed the offense of resisting, delaying, or obstructing a law enforcement officer. On 19 August 2013, prior to the resolution of these petitions, the probation imposed on 20 August 2012 expired. As a result, D.S.B. was not on probation between 20 August 2013 and 9 December 2013, the date that a hearing was conducted on the new petitions.

At the 9 December 2013 hearing, D.S.B. admitted the offense of larceny from the person, a class H felony. Pursuant to a plea agreement, in exchange for D.S.B.'s admission, the State reduced the charge of robbery with a dangerous weapon to larceny from the person, and dismissed the petitions alleging possession of drug paraphernalia and resisting an officer. Judge Edward A. Pone accepted the plea arrangement and adjudicated D.S.B. delinquent based on commission of larceny from the person. On 20 December 2013 Judge Pone entered a disposition order placing D.S.B. on Level 2 probation, beginning 9 December 2013. The disposition order found that D.S.B.'s delinquency level was medium, and that the offense for which he was adjudicated delinquent was serious. On 20 December 2013, Judge Pone entered an order addressing petitions for review filed on 11 December 2012 and 3 May 2013, alleging violations of D.S.B.'s expired term of probation. Judge Pone "ordered that there be no further court involvement" as to the motions for review of the expired

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probationary term.

On 31 January 2014 D.S.B.'s juvenile court counselor filed a motion for review of “[D.S.B.’s] progress on probation and to determine whether [D.S.B.] has violated the conditions of probation.” The motion for review alleged that D.S.B. had violated the conditions of his probation by being suspended from school on 13 December 2013, failing to maintain a study log, testing positive for THC (the active ingredient in marijuana) on 18 December 2013, and sneaking out of his home without permission on 24 January 2014. The motion for review stated that the term of probation to which D.S.B. was then subject would expire on 8 December 2014. However, the motion for review erroneously referenced the term of probation running from 20 August 2011 to 20 August 2013, which had been based upon the charge of disorderly conduct, rather than his current term of probation entered 9 December 2013, based upon the charge of larceny from the person.

At a hearing conducted on 27 February 2014, D.S.B. admitted violating the conditions of his probation by being suspended from school, leaving home without permission, testing positive for THC, and failing to maintain a study log. The prosecutor reminded the trial court that the last time D.S.B. had been in court, the trial court stated that the next time D.S.B. was in court he would likely be sent to a youth development center (“YDC”) of the North Carolina Division of Juvenile Justice. The record does not include a record of the prior court appearance to which the prosecutor referred; however, D.S.B. did not object to this characterization of the

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previous proceedings.

D.S.B.'s counsel argued that, although D.S.B. “underst[ood] that YDC is on the table,” instead of committing D.S.B. to a YDC, “it would be a better benefit for [D.S.B.] if he was placed in some type of program” where he might receive help with substance abuse and anger management issues. His counsel acknowledged the possibility of commitment to a YDC, but requested an alternative disposition:

[W]e’re asking that the Court would consider, as opposed to – even though he is YDC eligible, placing him in some type of program so that he can get the treatment that he needs first, and . . . if that does not work, then . . . [the] Court can at that time consider whether YDC would actually be appropriate for him. (emphasis added)

After hearing the arguments of counsel, the trial court proceeded as follows:

TRIAL COURT: [Defense counsel], your client had an armed robbery charge that was broken down?

DEFENSE COUNSEL: Yes, your Honor. that was a situation that he did plead responsible to that. . . . [H]e felt it was in his best interest to enter into a plea agreement, and it was broken down your Honor.

TRIAL COURT: . . . [T]he Court will find that the juvenile was previously given a Level II disposition and was placed on probation, and that he has violated terms of the probation. That the Court will find that the juvenile has been previously adjudicated for a serious offense, and therefore would order that the juvenile be committed to the Division of Juvenile Justice for placement in a Youth Development Center for a minimum of six months and up until his 18th birthday. . . .

On 3 March 2014 the trial court entered a Disposition and Commitment Order,

stating that D.S.B. had been placed on probation on 9 December 2013 for committing the offense of larceny from the person, and thus had “been adjudicated for a violent or serious offense and Level III [disposition] is authorized[.]” The order committed D.S.B. to a YDC for a period of at least six months and not longer than his 18th birthday.

D.S.B. appeals.

II. Commitment to YDC

In his sole argument on appeal, D.S.B. argues that the trial court “exceeded its statutory authority by ordering a Level Three commitment” because the motion for review alleged that D.S.B. had “violated conditions of probation that arose from a minor offense and therefore did not give [D.S.B.] notice that he might receive a Level Three disposition.” We disagree.

A. Standard of Review

N.C. Gen. Stat. § 7B-2510 provides in relevant part that:

(e) If the court, after notice and a hearing, finds by the greater weight of the evidence that the juvenile has violated the conditions of probation set by the court, the court may continue the original conditions of probation, modify the conditions of probation, or, except as provided in subsection (f) of this section, order a new disposition at the next higher level on the disposition chart in G.S. 7B-2508. . . .

(f) A court shall not order a Level 3 disposition for violation of the conditions of probation by a juvenile adjudicated delinquent for an offense classified as minor under G.S. 7B-2508.

“[A]ll that is required [in order for the trial court to revoke a juvenile's probation] is that there be competent evidence reasonably sufficient to satisfy the judge in the exercise of a sound judicial discretion that the [juvenile] had, without lawful excuse, willfully violated a valid condition of probation.” *In re Z.T.W.*, __ N.C. App. __, __, __ S.E.2d __, __ (2014) (2014 N.C. App. LEXIS 1408) (quoting *In re O'Neal*, 160 N.C. App. 409, 412, 585 S.E.2d 478, 481 (2003) (internal citation omitted).

“One's violation of court supervision is not a distinct "crime" like that associated with violations of statutory and common law offenses[, and a] . . . ‘probation violation hearing is not a criminal prosecution.’” *In re D.J.M.*, 181 N.C. App. 126, 130, 638 S.E.2d 610, 613 (2007) (quoting *State v. Monk*, 132 N.C. App. 248, 252, 511 S.E.2d 332, 335 (1999)). Thus, “a motion for review [is] a form of ‘dispositional’ hearing with procedural safeguards that differ significantly from those imposed on allegations that a juvenile committed a statutory or common law criminal offense.” *D.J.M.*, 181 N.C. App. at 131, 638 S.E.2d at 613. For example, the rules of evidence do not apply to probation revocation proceedings. *Z.T.W.*, __ N.C. App. at __, __ S.E.2d at __ (2014) (citing *State v. Murchison*, 367 N.C. 461, 758 S.E.2d 356 (2014)).

B. Analysis

As noted above, N.C. Gen. Stat. § 7B-2510(e) authorizes the trial court to enter a new disposition if, “after notice and a hearing” the court “finds by the greater weight of the evidence that the juvenile has violated the conditions of probation[.]” On

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appeal, D.S.B. does not dispute that in December 2013 he received a Level II disposition for commission of a felony, does not challenge the substantive merits of the trial court's ruling that he had violated the conditions of probation, and does not dispute that imposition of a Level III disposition was appropriate given his prior juvenile record. Instead, the juvenile argues that, because the "motion for review referenced an earlier probation order arising from a minor offense" the motion for review "did not give [D.S.B.] notice that he might receive a level three disposition."

On 31 January 2014, when the motion for review was filed, the only probationary term to which D.S.B. was subject was the Level II disposition imposed on 9 December 2013 for larceny from the person. A "violation" of the earlier probation, which had expired, would not have provided the trial court with authority to enter a new disposition. See *In re: A.F.*, __ N.C. App. __, 752 S.E.2d 245 (2013) (where the juvenile's probationary term expired and was not extended, the trial court could not implicitly or retroactively extend it and thus could not impose record points based on the assumption that the juvenile remained on probation after its expiration).

In addition, the erroneous reference to the earlier term of probation appears only in the section of the motion captioned "facts and circumstances indicating need for review." However, above the "facts and circumstances" section, D.S.B.'s court counselor avers that D.S.B. had violated the conditions of a term of probation that "is scheduled to end on 12/8/2014" (emphasis added). Thus, the motion for review accurately states the expiration date of the juvenile's probation. Moreover, the

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violations of probation that are listed in the “facts and circumstances” all occurred after he was placed on probation in December 2013. We conclude that the motion for review provided adequate notice to D.S.B. that he was alleged to have violated the conditions of the only term of probation to which he was then subject.

Moreover, even assuming, *arguendo*, that the motion for review failed to provide the juvenile with notice that he could receive a Level III disposition for violation of the conditions of probation, the record and transcript of the hearing establish that D.S.B. had actual notice of his legal status:

1. D.S.B. did not object to an order requiring him to be restrained with leg irons at the hearing, based in part on “[t]he nature of the charges,” and the need to “prevent the juvenile’s escape[.]” This strongly suggests that D.S.B. was aware that the hearing did not pertain to his adjudication for disorderly conduct three years earlier.
2. During the hearing, D.S.B.’s counsel acknowledged several times that commitment to a YDC was “on the table” but asked the trial court to consider other options.
3. During the hearing, D.S.B. did not challenge the prosecutor’s assertion that at a prior court appearance the trial court had warned D.S.B. that if he were returned to court, he would face commitment to a YDC.
4. D.S.B. did not object when the trial court expressly confirmed at the hearing that he was on probation for commission of the felony of larceny from the person, a Class H felony.

Based on the above facts and circumstances, we conclude that D.S.B. had actual notice that violation of the conditions of probation would expose him to a possible

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Level III disposition.

In seeking to persuade us to reach a contrary result, the juvenile appears to contend that the notice required by N.C. Gen. Stat. § 7B-2510(e) can only come from the motion for review, such that a clerical error in the motion for review “trumps” the juvenile’s actual notice of his probationary status. In support of this position, D.S.B. contends that in *In re S.B.*, 207 N.C. App. 741, 701 S.E.2d 359 (2010), this Court “held that the pleadings in the violation report controlled and limited the potential outcome of the probation proceedings.” However, the issue in *S.B.* was the interplay between N.C. Gen. Stat. § 7B-2510(f) and N.C. Gen. Stat. § 7B-2508(g). The case did not present any issue regarding whether the “pleadings in the violation report controlled” the outcome of the proceeding.

D.S.B. also argues that he was “prejudiced by the inadequacy of the motion because he did not have notice that he might be subject to a level three disposition when he made the decision to stipulate to several of the violations.” We have concluded, however, that D.S.B. did have notice that he was potentially subject to a Level III disposition. In addition, the violations to which D.S.B. stipulated were that he had been suspended from school, had not brought a study log to the meeting with his court counselor, had tested positive for THC, and had left home without permission. D.S.B. does not argue that these violations, which appear to involve straightforward issues of fact, would have been difficult to establish in the absence of a stipulation.

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IV. Conclusion

For the reasons discussed above, we conclude that D.S.B. had notice that upon the trial court's finding of a violation of the conditions of probation he might receive a Level III disposition, and that the trial court did not err by imposing a Level III disposition committing D.S.B. to a YDC.

AFFIRMED.

Judges GEER and STEPHENS concur.