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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-992

Filed: 5 July 2017

Henderson County, Nos. 12 CRS 53961-62

STATE OF NORTH CAROLINA

v.

MICHAEL EVAN COX

Appeal by defendant from judgments entered 2 May 2016 by Judge Mark E. Powell in Henderson County Superior Court. Heard in the Court of Appeals 19 June 2017.

Attorney General Joshua H. Stein, by Assistant Attorney General Ryan C. Zellar, for the State.

Sharon L. Smith for defendant.

DIETZ, Judge.

Defendant Michael Evan Cox appeals the revocation of his probation and activation of his sentences for arson. As explained below, Cox admitted that he violated the terms of his probation and had already served two periods of confinement in response to previous violations. Thus, we affirm the trial court's order revoking his

probation. We dismiss Cox's ineffective assistance of counsel claim without prejudice because that claim is not suited for resolution on direct appeal.

Facts and Procedural History

On 17 December 2012, Cox pleaded guilty to two counts of second degree arson. The trial court sentenced him to two terms of 17 to 21 months in prison but suspended the sentence and ordered 30 months of supervised probation. On 5 May 2015, the trial court extended Cox's probation for an additional one year.

On 16 February 2016, Cox's probation officer filed violation reports alleging that Cox willfully violated the monetary conditions of his probation and owed sums of \$1,361.00, \$1,520.00, and \$160.00. The reports also alleged that Cox already served two periods of confinement in response to previous violations.

At the revocation hearing, Cox moved to continue the hearing but the trial court rejected his request. Cox then admitted his violations. The trial court found that Cox violated the conditions of his probation and, as a result, the trial court revoked his probation and activated his suspended sentences. Cox timely appealed.

Analysis

I. Trial Court's Revocation Order

Cox first argues that the trial court erred by revoking his probation. He contends that, although he admitted the violations, the court failed to ask him about

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the reasons for the violations and failed to hear evidence or make findings regarding willfulness. As explained below, we reject this argument.

The trial court revoked Cox's probation based on his violation of the monetary conditions of his probation after serving two earlier confinements in response to violations. *See* N.C. Gen. Stat. § 15A-1344(a), (d2) (2015). At the hearing, Cox admitted that he violated the terms of his probation and the trial court expressly acknowledged Cox's admission. The court then found that Cox violated the conditions of his probation as set forth in his probation violation reports, that he waived a hearing and admitted his violations, and that he violated each condition willfully and without valid excuse. These findings adequately support the trial court's decision to revoke Cox's probation. *See State v. Lee*, 232 N.C. App. 256, 261, 753 S.E.2d 721, 724 (2014); *State v. Sherrod*, 191 N.C. App. 776, 778, 663 S.E.2d 470, 472 (2008).

We also reject Cox's claim that the trial court was required to personally examine him regarding the reasons he failed to pay his probation debt, despite his decision to waive the hearing and admit the violations. "Unlike when a defendant pleads guilty, there is no requirement that the trial court personally examine a defendant regarding his admission that he violated his probation." *State v. Sellers*, 185 N.C. App. 726, 728-29, 649 S.E.2d 656, 657 (2007). Simply put, Cox's admission—standing alone—was sufficient; the court had no duty to inquire into the reasons for it. Accordingly, the trial court did not err in revoking Cox's probation.

II. Ineffective Assistance of Counsel

Cox next argues that he was denied his Sixth Amendment right to effective assistance of counsel at the probation revocation hearing. He contends that his counsel should have presented evidence regarding his inability to work due to medical problems and his plan to enter a residential drug treatment program. We dismiss this claim without prejudice to raise it in the trial court.

“As a general proposition, claims of ineffective assistance of counsel should be considered through motions for appropriate relief and not on direct appeal.” *State v. Carpenter*, 232 N.C. App. 637, 646-47, 754 S.E.2d 478, 485 (2014) (citation omitted). If those claims cannot readily be resolved through the “cold record” on appeal, this Court will “dismiss those claims without prejudice, allowing defendants to bring them pursuant to a subsequent motion for appropriate relief in the trial court.” *Id.*

This issue is not suitable for resolution on the cold record on appeal. For example, we do not know whether counsel was even informed of the evidence Cox identifies, whether it was true, and whether counsel had reasons for declining to present it at the hearing. We therefore dismiss Cox’s ineffective assistance of counsel claim without prejudice to pursue it in the trial court.

Conclusion

For the reasons stated above, we affirm the judgments of the trial court and dismiss Cox’s ineffective assistance of counsel claim without prejudice.

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AFFIRMED IN PART; DISMISSED IN PART.

Judges ELMORE and BERGER concur.

Report per Rule 30(e).