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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-320

Filed: 21 November 2017

Wake County, No. 16 CRS 4189

STATE OF NORTH CAROLINA

v.

WENDY M. DALE

Appeal by defendant from order entered 9 November 2016 by Judge Kendra Hill in Wake County Superior Court. Heard in the Court of Appeals 18 September 2017.

*Attorney General Joshua H. Stein, by Assistant Attorney General Heather A. Haney, for the State.*

*Wendy M. Dale, pro se, for defendant.*

DIETZ, Judge.

Defendant Wendy Dale appeals the trial court's order finding that she willfully violated the conditions of her probation. As explained below, Dale agreed to a payment schedule to satisfy the monetary conditions of her probation and willfully failed to comply with that schedule. Thus, the trial court properly determined that she violated the terms of her probation. We affirm the trial court's order.

### **Facts and Procedural History**

On 10 July 2014, Defendant Wendy Dale was convicted of disorderly conduct in a public building and sentenced to twelve months of supervised probation. The conditions of her probation included payment of \$852.50 for court costs, fines, and fees, 40 hours of community service, and a seven-day active sentence in the custody of the Orange County Sheriff's Department.

On 30 June 2016, the trial court entered a consent order modifying the terms of Dale's probation. Under the consent order, Dale was still required to pay the \$852.50, but was given credit for completing three of the seven days of her active sentence and ordered to complete the remaining four days.

On 13 September 2016, Dale's probation officer filed a violation report alleging that Dale had violated her probation by failing to pay the total amount due according to the payment schedule and by failing to serve the remaining four days of her active sentence. The trial court held a probation violation hearing on 8 November 2016.

At the hearing, Dale's probation officer testified that he and Dale had set up a payment plan for the monetary conditions of her probation under which Dale agreed to pay \$146.50 per month beginning 16 July 2016 until satisfaction of the total amount due. Dale signed the payment schedule.

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Dale did not comply with that payment schedule. She paid \$40.00 on 16 August 2016; \$40.00 on 7 September 2016; \$40.00 on 30 September 2016; \$40.00 on 31 October 2016; and \$426.00 on 5 November 2016.

Dale's probation officer also testified that Dale reported to the jail on the dates listed in the consent order, but was turned away because the jail did not have her paperwork. Before filing the violation report, the officer met with Dale and asked her to set up some other weekends to complete her active sentence, but Dale refused, stating that "she reported to the jail at the date and time listed and therefore has fulfilled the obligations."

Dale testified that she also did not feel obligated to pay the monetary conditions on the schedule established by her probation officer because, despite agreeing to the payment schedule and signing it, Dale did not believe she was required to follow it. Dale explained that the court's consent order used a form containing checkboxes for the court to specify whether the payment schedule would be set by the judge or by the probation officer. The court did not check either box on the form.

The trial court found that Dale willfully violated her probation by refusing to pay the monetary conditions of probation on the agreed upon schedule, and by refusing to reschedule and serve her required jail time. The trial court modified Dale's probation, requiring her to serve three days in jail (rather than the four required by

the initial consent order) and to pay the remaining monetary obligations pursuant to a new schedule set by her probation officer. Dale timely appealed.

### **Analysis**

This court reviews a trial court's probation violation order for abuse of discretion. *State v. Young*, 190 N.C. App. 458, 459, 660 S.E.2d 574, 576 (2008).

We first address Dale's failure to pay the monetary conditions of her probation. The trial court entered Dale's conditions of probation using a standard form document that imposed monetary conditions totaling \$852.50. In addition to listing the total amount of money owed, this portion of the order contained the text:

The "Monetary Conditions" in the Judgment Suspending Sentence are modified to read as follows: The defendant shall pay to the Clerk of Superior Court the "Modified Amount Due" shown below, plus the probation supervision fee, pursuant to a schedule

☐ determined by the probation officer.

☐ Set out by the court as follows: \_\_\_\_\_

The trial court did not check the boxes indicating whether the schedule would be determined by the probation officer or set out by the court. Dale argues that, because the court did not check either box on the form, she was not subject to any payment schedule and could pay the monetary conditions at whatever pace she wanted over the course of her probationary period.

We reject this argument because it ignores that, after the court entered the modified probation order, Dale's probation officer prepared a payment schedule,

presented it to Dale, and Dale signed it. Whether a box on the order form was checked or not, the order plainly stated that Dale must “pay to the Clerk of Superior Court the ‘Modified Amount Due’ shown below, plus the probation supervision fee, pursuant to a schedule.” Dale and her probation officer agreed to a payment schedule, and then Dale repeatedly failed to make payments as that schedule required.

If, as Dale argues now, she did not believe she could be subjected to a payment schedule, she should have declined to sign that schedule and returned to the trial court for relief. Instead, she agreed to a payment schedule, as her probation officer requested and the order permitted, and then failed to comply with that schedule. The trial court did not abuse its discretion by finding that this failure to comply with the payment schedule violated the terms of Dale’s probation.

Dale also asserts that the State failed to present any evidence that her violation was willful. Dale waived this argument because she did not raise it in the trial court. *State v. Haselden*, 357 N.C. 1, 10, 577 S.E.2d 594, 600 (2003). In any event, Dale stated at the revocation hearing that she refused to pay on schedule because she believed (mistakenly) that the terms of her probation did not require her to do so. Thus, Dale admitted that she willfully refused to pay; that she did so because of a mistaken view of the law is irrelevant.

Because we uphold the trial court’s probation violation order on this basis, and because Dale does not argue that the trial court abused its discretion with the new

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conditions it imposed (conditions that were actually less onerous than Dale's original probation terms), we need not address Dale's remaining arguments on appeal. *See State v. Hancock*, \_\_ N.C. App. \_\_, \_\_, 789 S.E.2d 522, 524–25 (2016). We therefore affirm the trial court's order.

**Conclusion**

For the reasons discussed above, we affirm the trial court's order.

AFFIRMED.

Chief Judge McGEE and Judge BERGER concur.

Report per Rule 30(e).