An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-1225

Filed: 15 May 2018

Wake County, Nos. 16 CRS 210610-12

STATE OF NORTH CAROLINA

v.

LUKINDA M. MOORE

Appeal by defendant from judgment entered 5 April 2017 by Judge Robert H. Hobgood in Wake County Superior Court. Heard in the Court of Appeals 7 May 2018.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Ryan F. Haigh, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Emily H. Davis, for defendant-appellant.

TYSON, Judge.

Lukinda M. Moore ("Defendant") appeals from a judgment entered upon jury verdicts finding her guilty of one count of willfully attempting to evade a tax payment and two counts of willful failure to file an individual tax return. We vacate the judgment and remand for resentencing.

I. Background

Defendant earned an income and owed North Carolina state income tax in 2012 and 2013, but failed to file a tax return or remit the taxes owed after withholding. In early 2014, Defendant submitted an NC-4 EZ "Employee's Withholding Allowance Certificate," in which she claimed she was exempt from paying North Carolina income tax in 2014, because she had no tax liability in 2013 and expected to have no tax liability in 2014. Defendant actually owed income tax in 2014, and she failed to file a tax return or remit any income tax for that year.

On 8 November 2016, Defendant was indicted on one count of willfully attempting to evade a tax payment in 2014 and two counts of willful failure to file an individual tax return in 2012 and 2013. On 3 April 2017, Defendant was tried by a jury in Wake County Superior Court. On 5 April 2017, the jury returned verdicts finding Defendant guilty of all charges. The trial court consolidated the offenses into a single judgment and sentenced Defendant to 5 to 15 months of imprisonment. That sentence was suspended and Defendant was placed upon supervised probation for 60 months. Defendant gave timely oral notice of appeal.

II. Jurisdiction

An appeal of right lies with this Court from a final judgment entered by the superior court pursuant to N.C. Gen. Stat. §§ 7A-27(b)(1) and 15A-1444(a) (2017).

III. Issue

Defendant's sole argument asserts the trial court improperly placed her on supervised probation for 60 months without making a statutorily required and specific finding that an extended term of probation was necessary.

IV. Analysis

The State concedes that this term of probation was unsupported. Defendant was sentenced to an intermediate punishment for a Class H felony. Pursuant to statute, "[u]nless the court makes specific findings that longer or shorter periods of probation are necessary," the length of the original period of probation for offenders such as Defendant shall be "not less than 18 nor more than 36 months." N.C. Gen. Stat. § 15A-1343.2(d)(4) (2017). The 60-month probationary period ordered by the trial court is not supported by specific findings of fact and violates the statutory mandate of N.C. Gen. Stat. § 15A-1343.2(d)(4). *Id.*

V. Conclusion

We vacate the judgment and remand the case for the trial court to either impose a probationary period authorized by N.C. Gen. Stat. § 15A-1343.2(d)(4) or to make the required findings that a longer probationary period is necessary. *See State v. Cardwell*, 133 N.C. App. 496, 509, 516 S.E.2d 388, 397 (1999). *It is so ordered.*

VACATED AND REMANDED FOR RESENTENCING.

Judges ELMORE and ZACHARY concur.

Report per Rule 30(e).