

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA19-920

Filed: 16 June 2020

Buncombe County, No. 18CRS089608

STATE OF NORTH CAROLINA,

v.

CRYSTAL HARDIN, Defendant.

Appeal by Defendant from judgment entered 27 March 2019 by Judge Peter B. Knight in Superior Court, Buncombe County. Heard in the Court of Appeals 3 March 2020.

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

*Appellate Defender Glenn Gerding, by Assistant Appellate Defender Amanda S. Zimmer, for Defendant-Appellant.*

McGEE, Chief Judge.

Crystal Hardin (“Defendant”) appeals from a judgment imposing 36 months of unsupervised probation. Defendant contends the trial court violated the statutory mandate contained in N.C. Gen. Stat. § 15A–1343.2 by sentencing her to 36 months

STATE V. HARDIN  
*Opinion of the Court*

of unsupervised probation without making a specific finding justifying the longer probation period. The State concedes the error. We remand for resentencing.

I. Factual and Procedural History

The undisputed evidence shows that Defendant and Shannon Fuhrmann engaged in a physical altercation in a Wendy's parking lot on 17 September 2018 in Black Mountain, North Carolina. Defendant was found guilty of simple assault in District Court, Buncombe County on 6 March 2019. Defendant was sentenced to 45 days' imprisonment, suspended for 12 months of supervised probation. Defendant appealed her conviction to Superior Court, Buncombe County, pursuant to N.C. Gen. Stat. § 15A-1431.

The appeal was heard in Superior Court, Buncombe County, and the jury found Defendant guilty of simple assault on 27 March 2019. Defendant was sentenced as a Level II misdemeanor offender to 45 days' imprisonment, suspended for a community punishment of 36 months of unsupervised probation. Defendant appeals.

II. Analysis

Defendant argues the trial court erred when it sentenced her to 36 months of unsupervised probation in violation of N.C. Gen. Stat. § 15A-1343.2. We agree.

“When this Court is confronted with statutory errors regarding sentencing issues, such errors are questions of law, and as such, are reviewed de novo.” *State v. Allen*, 249 N.C. App. 376, 379, 790 S.E.2d 588, 591 (2016) (internal quotations marks and citation omitted). Pursuant to N.C. Gen. Stat. § 15A-1343.2(d)(1), a defendant

STATE V. HARDIN  
*Opinion of the Court*

sentenced to community punishment shall not be placed on probation for more than 18 months unless the trial court makes a specific finding that a longer probationary term is necessary. N.C. Gen. Stat. § 15A-1343.2(d)(1) (2019).

“This Court has remanded for resentencing where the trial court violated section 15A–1343.2(d)(1) by entering a period of probation longer than 18 months without making the necessary findings that the extension was necessary.” *State v. Sale*, 232 N.C. App. 662, 664, 754 S.E.2d 474, 476 (2014); *see also State v. Love*, 156 N.C. App. 309, 317–18, 576 S.E.2d 709, 714 (2003) (explaining that the appropriate remedy for violations of N.C. Gen. Stat. § 15A-1343.2(d) is remand to the trial court for resentencing).

In the present case, Defendant was found guilty of a misdemeanor and sentenced as a Level II offender to 45 days’ imprisonment, which was suspended to community punishment for 36 months of unsupervised probation. The trial court entered no findings indicating the longer probationary period was necessary. Thus, the trial court erred by placing Defendant on probation for a period that exceeded 18 months. Accordingly, we remand to the trial court for resentencing consistent with N.C. Gen. Stat. § 15A-1343.2(d)(1), and direct the trial court to either (1) enter specific findings justifying why a longer period of probation is necessary or (2) place Defendant on a term of probation that does not exceed 18 months. *Sale*, 232 N.C. App. at 664, 754 S.E.2d at 476 (“[W]e remand for entry of specific findings by the trial

STATE V. HARDIN  
*Opinion of the Court*

court indicating why a longer probationary period is necessary or reduction of defendant's probation to a length of time authorized by section 15A-1343.2(d)(1).”).

III. Conclusion

For the reasons stated above, we hold that the trial court erred by sentencing Defendant to 36 months of unsupervised probation. We remand to the trial court for either (1) the entry of specific findings indicating why a probation period of longer than 18 months is necessary or (2) the reduction of Defendant's probation to a length of 18 months or fewer, as authorized by N.C. Gen. Stat. § 15A-1343.2(d)(1).

REMANDED.

Judge TYSON and Judge YOUNG concur.

Report per Rule 30(e).