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IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-116

No. COA20-415

Filed 6 April 2021

Cleveland County, No. 10 CRS 4323

STATE OF NORTH CAROLINA

v.

LAQUIA EVETTE BLACK

Appeal by Defendant from a Judgment entered 13 January 2020, by Judge W. Todd Pomeroy in Cleveland County Superior Court. Heard in the Court of Appeals 10 February 2021.

Attorney General Joshua H. Stein, by Assistant Attorney General Kyu-Eun Lee, for the State.

Mary McCullers Reece for defendant-appellant.

HAMPSON, Judge.

Factual and Procedural Background

¶ 1

Laquia Evette Black (Defendant) appeals from Judgment entered 13 January 2020, revoking Defendant's probation and activating her suspended sentence after the probation period expired. The Record reflects the following:

¶ 2

On 6 April 2009, a grand jury indicted Defendant on charges of Identify Theft stemming from an incident occurring 14 April 2008. Defendant pleaded guilty to the two counts of Identity Theft on 6 January 2010, and the trial court sentenced her as a Level III offender to a sentence at the top of the then-existing presumptive range of sixteen to twenty months, which it suspended for thirty-six months of supervised probation. The trial court also ordered Defendant pay monetary fees in the amount of \$490.50.

¶ 3

During the term of probation, on 27 October 2011, Defendant's probation officer filed a Violation Report alleging Defendant had missed two scheduled office appointments in September 2011, was in arrears \$320.00, had moved from her reported residence on or about 14 September 2011, without notifying the probation officer, and had willfully absconded supervision. In the section titled "Hearing Notice" the Violation Report provided a hearing would take place in Cleveland County Superior Court, Room #1, at 9:00 a.m., yet did not include a hearing date.

¶ 4

On 13 January 2020, more than seven years after Defendant's probation period expired, the trial court conducted Defendant's probation revocation hearing. The Record is unclear as to when Defendant returned to North Carolina or the exact date she was taken into custody, but the State indicated to the trial court that Defendant had been arrested on an outstanding felony charge in Guilford County, and defense counsel indicated Defendant had been jailed for approximately eighty-five days prior

to the probation revocation hearing. The trial court did not ask the State why the probation revocation hearing was occurring over seven years after Defendant's probation period expired or whether the State made any efforts to contact Defendant in the interim period between the State's filing of the Violation Report and the probation revocation hearing.

¶ 5 During the 13 January 2020 hearing, Defendant admitted to all of the allegations as alleged in the Violation Report including the missed office appointments, failure to pay arrears, failing to report a change of address, and willfully absconding. Defendant explained she left North Carolina during her probation period to take care of her sister's disabled daughter in Connecticut. Defendant apologized: "I paid all my money except for . . . 300 . . . dollars. I did all my community service. I never failed a drug test. I did everything that I was supposed to do except for report as far as leaving."

¶ 6 The trial court then found Defendant was "in willful violation of probation in that she absconded supervision[,] and stated, "the Court, in its discretion, will revoke the defendant's probation, place that sentence in activation, [and] give her credit for any credit she's entitled to." Defense counsel requested the trial court to consider modifying Defendant's sentence because of the significant amount of time that had passed since Defendant's probation expired. However, the trial court responded, "I tried to do that. I can't. Sentenced in a box -- that's where it's at. . . . I don't normally

do this, but I will recommend work release.” Defendant provided Notice of Appeal in open court.

Issues

¶ 7

The issues on appeal are whether: (I) the trial court erred in revoking Defendant’s probation after the expiration of the probation period without finding “good cause” pursuant to N.C. Gen. Stat. § 15A-1344(f)(3); and (II) the trial court misapprehended its authority to modify Defendant’s sentence and therefore erred by failing to exercise its discretion under N.C. Gen. Stat. § 15A-1344(d).

Analysis

I. Good Cause

¶ 8

Defendant argues the trial court erred when it revoked her probation after her probation period expired without first finding “good cause” as required by N.C. Gen. Stat. § 15A-1344(f)(3) and that the Judgment should be vacated without remand because “neither the record nor the transcript contains ‘persuasive evidence’ of good cause.” Although the State concedes the trial court did not make a finding pursuant to Section § 15A-1344(f)(3), the State contends we should remand the present case to the trial court for a good-cause determination.

¶ 9

After a probation period has expired, the trial court can only revoke probation if all of the following are present:

- (1) Before the expiration of the period of probation the State has filed a written violation report with the clerk indicating its intent to conduct a hearing on one or more violations of one or more conditions of probation.
- (2) The court finds that the probationer did violate one or more conditions of probation prior to the expiration of the period of probation.
- (3) The court finds for *good cause* shown and stated that the probation should be extended, modified, or revoked.

N.C. Gen. Stat. § 15A-1344(f)(1)-(3) (2019) (emphasis added).

¶ 10 Moreover, “the court is given considerable discretion in determining whether good cause exists for modifying the terms of probation.” *State v. Willis*, 199 N.C. App. 309, 311, 680 S.E.2d 772, 774 (2009) (citation omitted). A finding of good cause, however, must be expressly made by the trial court; “such a finding cannot simply be inferred from the record.” *State v. Morgan*, 372 N.C. 609, 616, 831 S.E.2d 254, 259 (2019). “However, when the trial court fails to make a finding of good cause under N.C. Gen. Stat. § 15A-1344(f)(3), we may only remand where ‘the record contain[s] sufficient evidence to permit the necessary finding of “reasonable efforts” by the State to have conducted the probation revocation hearing earlier.’” *State v. Sasek*, ___ N.C. App. ___, ___, 844 S.E.2d 328, 334, *disc. rev. denied*, ___ N.C. ___, 851 S.E.2d 49 (2020) (citations omitted).

¶ 11 After review of the Record and transcript in the case *sub judice*, we determine the trial court’s Judgment must be vacated and remanded for further findings as

required by N.C. Gen. Stat. § 15A-1344(f)(3). Here, the trial court revoked Defendant’s probation seven years after her probationary period terminated, and the parties agree the trial court made no express finding under Section 15A-1344(f)(3) that good cause existed to do so. Although the Record is limited, Defendant admitted at the hearing to the allegations as contained in the Violation Report, including specifically absconding from supervision by moving to Connecticut without informing her probation officer. It is, however, unclear when Defendant returned to North Carolina, and what—if any—efforts were made by the State to conduct the probation violation hearing earlier. Thus, we are “unable to say from our review of the record that *no evidence* exists that would allow the trial court on remand to make a finding of ‘good cause shown and stated’ under subsection (f)(3).” *Morgan*, 372 N.C. at 610, 831 S.E.2d at 256 (emphasis added). Accordingly, on remand, the trial court must make an *express* finding of good cause supported by sufficient evidence to permit the necessary finding of “reasonable efforts” by the State to have pursued an earlier probation revocation hearing.¹ *See id.* at 618, 831 S.E.2d at 260; *see also State v.*

¹ In remanding the matter for a good-cause determination, we are also mindful of our recent opinion in *State v. Sasek*, where this Court vacated the trial court’s judgments revoking the defendant’s probation “[b]ecause the record contain[ed] no evidence that the State made reasonable efforts to conduct the revocation hearing at a sooner date[.]” ___ N.C. at ___, 844 S.E.2d at 335. There, however, the probation violation did not arise from absconding but rather from the commission of criminal offenses during which the defendant was under surveillance and subsequently, it appears, in custody and an earlier revocation hearing had been scheduled but did not occur for unexplained reasons. *See id.* at ___, 844 S.E.2d at 331.

Bryant, 361 N.C. 100, 104, 637 S.E.2d 532, 535 (2006) (“it is the State’s burden to have made reasonable efforts to conduct the hearing at an earlier time”).

II. Misapprehension of Law

¶ 12 Defendant next argues the trial court misapprehended its authority to modify her sentence and therefore erred by failing to exercise its discretion under N.C. Gen. Stat. § 15A-1344(d). “Reversal is warranted where a trial court acts under a misapprehension of the law.” *In re S.G.V.S.*, 258 N.C. App. 21, 25, 811 S.E.2d 718, 721 (2018) (citation and quotation marks omitted). Further, “[w]here it appears that the judge below has ruled upon matter before him upon a misapprehension of the law, the cause will be remanded . . . for further hearing in the true legal light.” *Id.* (citation and quotation marks omitted) (ellipses in original).

¶ 13 N.C. Gen. Stat. § 15A-1344(d) provides:

If a probationer violates a condition of probation at any time prior to the expiration or termination of the period of probation, the court . . . may continue the defendant on probation, with or without modifying the conditions, may place the defendant on special probation as provided in subsection (e), or, if continuation, modification, or special probation is not appropriate, may revoke the probation and activate the suspended sentence imposed at the time of initial sentencing

N.C. Gen. Stat. § 15A-1344(d) (2019). “The court, before activating a sentence to imprisonment established when the defendant was placed on probation, may reduce the sentence, but the reduction shall be consistent with subsection (d1).” *Id.*

Subsection (d1) provides: “If the presumptive range is used for the initial suspended sentence, the reduced sentence shall be within the presumptive range.” *Id.* § 15A-1344(d1).

¶ 14 Here, the trial court activated Defendant’s suspended, active sentence of sixteen to twenty months. When defense counsel requested the trial court “consider modifying the sentence[,]” the trial court declined, stating: “I tried to do that. I can’t. Sentenced in a box -- that’s where it’s at.” Indeed, at the time Defendant was sentenced in 2008, the presumptive range for a prior-record-level III offender of a Class G offense was thirteen to sixteen months, rendering Defendant’s original sentence of sixteen to twenty months at the top of the presumptive range. However, it is unclear from the trial court’s comments whether the trial court believed it did not have the authority to reduce Defendant’s sentence within the presumptive range or if the trial court simply did not think such reduction was wise under the circumstances. Because we remand this matter for a determination under Section 15A-1344(f)(3), if the trial court determines there is evidence sufficient to support a finding of good cause to modify the terms of Defendant’s long-expired probationary sentence and to, again, activate Defendant’s sentence based on her admitted violations, the trial court may consider whether to exercise its discretion as provided in Sections 15A-1344(d) and (d1) to consider a reduction in Defendant’s active sentence.

Conclusion

¶ 15 Accordingly, for the foregoing reasons, the Judgment revoking Defendant's probation and activating her suspended sentence is vacated and this matter is remanded.

VACATED AND REMANDED.

¶ 16 Judges TYSON and INMAN concur.

Report per Rule 30(e).