

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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

2021-NCCOA-479

No. COA20-416

Filed 7 September 2021

Gaston County, Nos. 15CRS052842-44, 47-48

STATE OF NORTH CAROLINA

v.

LARRY BRANDON MOORE, Defendant.

Appeal by defendant from judgments entered on or about 12 February 2019 by Judge David A Phillips in Superior Court, Gaston County. Heard in the Court of Appeals 23 February 2021.

Attorney General Joshua H. Stein, by Assistant Attorney General Yvonne B. Ricci, for the State.

Mary McCullers Reece, for defendant-appellant.

STROUD, Chief Judge.

¶ 1 Defendant appeals the revocation of his probation. Because the trial court properly exercised its discretion, we affirm.

I. Background

¶ 2 On 2 December 2019, defendant, having waived his right to counsel, appeared before the trial court *pro se* and admitted he had violated his probation by willfully

absconding as alleged in a violation report dated 19 November 2019. Thereafter, the trial court revoked defendant's probation and activated his sentences. Defendant appeals.

II. Trial Court's Exercise of Discretion

¶ 3 Defendant makes only one argument on appeal: "The trial court erred by failing to exercise the discretion granted by N.C.G.S. 15A-1344(d) in considering . . . [defendant's] motion to modify his sentences upon revocation." Here, defendant does not contend that the trial court abused its discretion in revoking his probation, but rather believed it did not have any discretion under North Carolina General Statutes §15A-1344(d). "Alleged errors in statutory interpretation are errors of law that we review *de novo*. Under a *de novo* review, the court considers the matter anew and freely substitutes its own judgment for that of the lower tribunal." *State v. Neira*, 270 N.C. App. 359, 361, 840 S.E.2d 890, 892 (2020) (citations and quotation marks omitted).

¶ 4 The entire focus of defendant's appeal hinges on one brief interaction with the trial court when defendant requested to be sentenced in the mitigated range with sentences to run concurrently. The trial court responded,

Mr. Moore, I misspoke. Your active sentences were in the mitigated range. They were Class E's. And you received a mitigated sentence on those two active sentences. On these two, these are two separate probation violations. They are in the presumptive range of 6 to 17 months. They are not

in the mitigated range. I misspoke. Your active sentences were in the mitigated range. And that may change what you want to do with these probation violations.

Does that change – and basically, what the Court does – *the Court cannot change what your sentence was, or will not* change that. That may change what you want to do as far as this probation violation goes.

(Emphasis added.) Defendant contends “[g]iven the trial judge’s indication that he could not modify . . . [defendant’s] sentence upon revocation his failure to exercise discretion must be reversed[.]” In other words, defendant contends the trial court did not realize it had the authority to modify his sentences, and thus did not consider modification.

¶ 5

We do not interpret the trial court’s statements as indicating a misunderstanding of the law. Immediately after stating, “the Court cannot” the trial court indicated it was exercising its discretion by immediately noting it “*will not change that.*” (Emphasis added.) Further, we note even if the trial court had not corrected this one word, the hearing overall demonstrates compliance with North Carolina General Statute § 15A-1344(d), and the trial court’s understanding it had discretion to revoke probation and modify the sentences.¹ We conclude that the trial

¹ Defendant acknowledges in his brief that “the trial court did not have the authority to reduce . . . [defendant’s] sentences to the mitigated range. N.C.G.S. § 15A-1334(d1). The trial court did, however, have authority to reduce the sentences within the presumptive range and to run them concurrently.” Thus, defendant’s argument as to discretion is specifically as to the sentence within the presumptive range and the option to run sentences concurrently.

STATE V. MOORE

2021-NCCOA-479

Opinion of the Court

court properly exercised its discretion under North Carolina General § 15A-1344(d). Defendant makes no arguments regarding the actual sentence the trial court imposed, and thus as the only issue on appeal is whether the trial court erred by failing to exercise its discretion, we find no error.

AFFIRMED.

Judges MURPHY and GRIFFIN concurs.

Report per Rule 30(e).