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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-188

No. COA21-197

Filed 15 March 2022

Guilford County, No. 14CRS086171, 17CRS024427, 18CRS024331-33

STATE OF NORTH CAROLINA

v.

LAKORYA MONIA HARRISON, Defendant.

Appeal by Defendant from judgment entered 16 September 2020 by Judge William A. Wood II, in Guilford County Superior Court. Heard in the Court of Appeals 1 December 2021.

Attorney General Joshua H. Stein, by Assistant Attorney General Allison Angell, for the State.

Jason Christopher Yoder for the Defendant.

DILLON, Judge.

¶ 1 Defendant appeals from judgments revoking her probation.

I. Background

¶ 2 In 2016, Defendant received a suspended sentence in Alamance County after pleading guilty to several charges and was placed on supervised probation for forty-eight (48) months. In 2017, Defendant received a suspended sentence in Guilford

County after pleading guilty to two charges and was placed on supervised probation for thirty-six (36) months.

¶ 3 In 2020, three probation violation reports were filed against Defendant in Guilford County. Defendant's Alamance County cases were assigned Guilford County case file numbers.

¶ 4 After a hearing on the matter, the trial court revoked Defendant's probation in all matters. The trial court made an oral finding on the record that the State had shown "good cause" to revoke Defendant's probation but did not indicate the same in its written findings. Defendant filed a *pro se* written notice of appeal.

II. Analysis

¶ 5 Defendant makes two arguments on appeal. To the extent that Defendant's notice of appeal was defective, we grant Defendant's petition for writ of *certiorari* to consider these arguments.

A. Good Cause Finding

¶ 6 Defendant argues that the trial court erred in making a "good cause" finding before hearing all the evidence at her probation revocation hearing. We disagree.

¶ 7 We review a trial court's judgment revoking probation for abuse of discretion. *State v. Hewett*, 270 N.C. 348, 353, 154 S.E.2d 476, 480 (1967). "Abuse of discretion results where the court's ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision." *State v. Hennis*, 323

N.C. 279, 285, 372 S.E.2d 523, 527 (1988).

¶ 8 Our General Statutes provide required elements upon which a trial court may extend, modify, or revoke probation:

> (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.
>
> (4) If the court opts to extend the period of probation, the court may extend the period of probation up to the maximum allowed under G.S. 15A-1342(a).

N.C. Gen. Stat. § 15A-1344(f) (2020). All of the above elements must be satisfied in order for the trial court to revoke probation. *Id.*

¶ 9 Here, Defendant argues that the trial court's oral "good cause" finding violated *State v. Sasek*, 271 N.C. App. 568, 844 S.E.2d 328 (2020), and *State v. Morgan*, 372 N.C. 609, 831 S.E.2d 254 (2019), cases that interpret the requirements of Section 15A-1344(f).

¶ 10 In *State v. Sasek*, our Court concluded that remand is not appropriate where "the record on appeal did not show that the State made reasonable efforts to conduct an earlier probation hearing" when the defendant's probation expired shortly before

revocation. 271 N.C. App. at 575, 844 S.E.2d at 334.

¶ 11 In *State v. Morgan*, our Supreme Court stated that a trial court must "mak[e] a specific finding that good cause exist[s] . . . despite the expiration of [the defendant's] probationary period." 372 N.C. at 613, 831 S.E.2d at 257. This finding cannot be "inferred from the record" and "must actually be made by the trial court." *Id*. at 616, 831 S.E.2d at 259.

¶ 12 Here, it is true that the revocation hearing was not held until after Defendant's probation had expired. However, there was no indication that the State unreasonably delayed Defendant's revocation hearing proceedings. In fact, the record shows that it was *defense counsel* who requested and received continuances to adequately prepare Defendant's case. The original court dates scheduled for Defendant's revocation hearing would have occurred prior to the expiration of her probationary term. These circumstances indicate no abuse of discretion by the trial court.

¶ 13 Further, the trial court *did* make a specific finding on the record that the State had shown "good cause" to revoke Defendant's probation. While the finding was not written in the trial court's judgments revoking probation, nothing in *Morgan* indicates that N.C. Gen. Stat. § 15A-1344(f) requires a *written* finding of fact. Therefore, we conclude that the trial court did not abuse its discretion in revoking Defendant's probation.

B. Jail Credit

¶ 14 Defendant further argues that she is entitled to jail credit in 18CRS024333. We decline to address this argument because this issue is not properly before us.

¶ 15 Our General Statutes provide that "[u]pon committing a defendant upon the conclusion of an appeal, or a parole, probation, or post-release supervision revocation, the committing authority shall determine any credits allowable on account of these proceedings[.]" N.C. Gen. Stat. § 15-196.4 (2020). "Upon reviewing a petition seeking credit not previously allowed, the court shall determine the credits due and forward an order setting forth the allowable credit[.]" *Id*.

¶ 16 In *State v. Cloer*, we determined that the issue of entitlement to jail credit was not properly before us because the issue was never brought before the trial court. 197 N.C. App. 716, 722, 678 S.E.2d 399, 403-04 (2009). Our appellate courts agree:

> [T]he proper procedure to be followed by a defendant seeking to obtain credit for time served in pretrial confinement in addition to that awarded at the time of sentencing or the revocation of the defendant's probation is for the defendant to initially present his or her claim for additional credit to the trial court, with alleged errors in the trial court's determination subject to review in the Appellate Division following the trial court's decision by either direct appeal or *certiorari*, as the case may be.

Id. at 721, 678 S.E.2d at 403.

¶ 17 Here, Defendant did not present the issue of entitlement to jail credit before the trial court. Therefore, we conclude that the issue is not properly before us and dismiss this portion of her appeal without prejudice to her ability to file a motion for

an award of additional credit in the Superior Court of Guilford County.

III. Conclusion

¶ 18 As to Defendant's first argument, we conclude that the trial court did not commit reversible error. We dismiss Defendant's issue related to jail credit as it is not properly before this Court.

AFFIRMED IN PART; DISMISSED IN PART.

Judges ZACHARY and COLLINS concur.

Report per Rule 30(e).