

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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

2022-NCCOA-327

No. COA21-611

Filed 3 May 2022

Henderson County, No. 20 CRS 52

STATE OF NORTH CAROLINA

v.

ERIN IRELAND

Appeal by defendant from judgment entered 26 May 2021 by Judge Peter B. Knight in Henderson County Superior Court. Heard in the Court of Appeals 6 April 2022.

Attorney General Joshua H. Stein, by Assistant Attorney General James R. Baker, for the State.

Richard Croutharmel for defendant-appellant.

ARROWOOD, Judge.

¶ 1

Erin Ireland (“defendant”) appeals from the trial court’s judgment sentencing her to 18 months’ probation with the special condition to submit to a substance abuse assessment. For the following reasons, we find defendant received a fair trial free of error.

I. Background

STATE V. IRELAND

2022-NCCOA-327

Opinion of the Court

¶ 2 On 3 January 2020, the Henderson County Sheriff's Office issued a warrant for defendant's arrest, alleging that defendant "unlawfully, willfully[,] and feloniously did break and enter a building" in Hendersonville, North Carolina, "with the intent to commit a felony therein." The warrant also alleged that defendant had stolen \$200.00 from the personal property of her mother, Melinda Ireland ("Melinda"). Defendant was indicted on 3 August 2020 for felony breaking and entering, and felony larceny.

¶ 3 The matter came on for trial on 24-25 May 2021 in Henderson County Superior Court, Judge Knight presiding. At trial, the trial court heard testimony from, among others, Melinda and defendant.

¶ 4 Melinda testified that on 30 October 2019, at approximately 6:30 a.m., defendant phoned her asking for \$20.00 to buy gasoline. Melinda agreed and informed defendant that she could find the money in a plastic bag that "would be hanging from the grate on the side door" of Melinda's house. Because Melinda and her husband were not at home at this time, Melinda instructed her granddaughter, defendant's daughter who lived with Melinda, to take \$20.00 from a sock in a drawer in which Melinda hid money, put the \$20.00 in a plastic bag, and hang the plastic bag on the grate on the side door before leaving for school. Melinda's granddaughter did so and left for school "just after 7:00 [a.m.]." When Melinda returned home later that

day, she “noticed that the [plastic] bag[] was empty and the main door to the house was still locked.”

¶ 5

On 8 November 2019, Melinda realized that \$200.00 were missing from the sock in which she hid money. Melinda knew that defendant “was the last known person other than . . . [her]self, [her] husband[,] and [her] granddaughter . . . to have been to [her] house.” Melinda checked her home security camera and found footage from 30 October 2019 of defendant entering Melinda’s unoccupied home around 7:11 a.m. by crawling through the pet door and exiting around 7:13 a.m. through the side door. At the time, defendant did not have keys to Melinda’s house and was not allowed in unless Melinda or her husband were present. After confronting defendant over the phone, Melinda reported the incident to the police on 13 November 2019.

¶ 6

During Melinda’s testimony, the State introduced as its exhibit Melinda’s security camera footage from 30 October 2019. The trial court played the footage, and Melinda described how she recognized defendant by her distinctive hat and jacket, and by “the way she walks.”

¶ 7

During her own testimony at trial, defendant denied that she took \$200.00 from Melinda. Though she admitted that she was depicted in the security camera footage from 30 October 2019, defendant claimed that, after taking the \$20.00 from the plastic bag, she only entered Melinda’s house to use the bathroom. At this time, defendant had seven prior convictions, including a 2012 possession of narcotic

equipment conviction and a 2014 “petit theft” conviction, both of which she incurred in Florida.

¶ 8 On 26 May 2021, the jury returned a verdict of guilty for misdemeanor breaking and entering, and not guilty for larceny. Pertinently, after the jury’s verdict, the prosecutor stated the following:

Your Honor, in discussion with Melinda . . . previously, she didn’t have any intent to try and have [defendant] put in custody for some lengthy period of time or anything of that nature. It’s not a malicious request for sentencing. I will ask Your Honor to consider, as [defendant’s trial counsel] related to, [defendant] has some criminal history, there’s some drug history as well and a prior history of theft. I would ask Your Honor to consider a supervised probationary sentence in the matter just based solely on those issues. And that breaking and entering is often concomitant with drug use and I would ask that supervised probation be issued in this case and ordered in this case.

¶ 9 The trial court sentenced defendant as a prior record level III to an active punishment of 120 days in jail, then suspended the sentence and placed defendant on 18 months’ supervised probation. The trial court also imposed as a special condition of probation a requirement that defendant “submit to TASC for substance abuse assessment and comply with any recommendations of that assessment”

¶ 10 On 4 June 2021, defendant filed a *pro se* notice of appeal. Defendant did not, however, serve this notice of appeal on the State in accordance with N.C.R. App. P.

4(a)(2).¹ Appellate counsel was appointed on 1 July 2021. On 14 September 2021, defendant, through counsel, settled the record on appeal with the following three issues: 1) “Defendant received ineffective assistance of counsel when her trial attorney failed to pursue the defense of necessity”; 2) “The trial court reversibly erred by failing to grant the Defendant’s motion to dismiss the breaking or entering charge because the State had presented insufficient evidence of lack of consent to be on the premises”; and 3) “The trial court reversibly erred in failing to personally inquire of Defendant whether she objected to the attorney fee ordered by the trial court.”

¶ 11 On 22 December 2021, defendant filed her appellate brief, as well as a Petition for *Writ of Certiorari* (“PWC”) with this Court, asking that the appeal proceed despite her failure to enter notice of appeal in compliance with N.C.R. App. P. 4(a)(2). In both her PWC and her brief, defendant abandons the foregoing settled issues for appeal, and instead argues that “the trial court reversibly erred during the sentencing phase of the case by ordering her to complete a substance abuse assessment and adhere to any recommendations when there was no evidence she suffered from substance use or abuse issues.”

¹ “Any party entitled by law to appeal from a judgment or order of a superior or district court rendered in a criminal action may take appeal by . . . filing notice of appeal with the clerk of superior court and serving copies thereof upon all adverse parties within fourteen days after entry of the judgment or order or within fourteen days after ruling on a motion for appropriate relief made during the fourteen-day period following entry of the judgment or order.” N.C.R. App. P. 4(a)(2).

II. Discussion

¶ 12 As an initial matter, we must first determine whether this Court has jurisdiction over this appeal. In her PWC, defendant acknowledges that her “*pro se* notice of appeal failed to indicate service of the notice of appeal on the State in violation of the appellate rules[.]” However, a failure to comply with N.C.R. App. P. 4(a)(2) is insufficient to warrant dismissal of an appeal. *See State v. Ragland*, 226 N.C. App. 547, 553, 739 S.E.2d 616, 620 (2013). Accordingly, we dismiss defendant’s PWC as moot and address the merits of the appeal. *See id.*

¶ 13 Defendant argues that the trial court “abused its discretion by imposing a special condition of probation that [defendant] comply with a substance abuse assessment and its recommendations where the only evidence she may have had a substance abuse problem was an 11-year-old out-of-state conviction for possessing narcotic equipment[.]” and that this special condition of probation is “not reasonably related to [defendant’s] conviction offense of misdemeanor breaking or entering.”

¶ 14 “A challenge to a trial court’s decision to impose a condition of probation is reviewed on appeal using an abuse of discretion standard.” *State v. Chadwick*, 271 N.C. App. 88, 89, 843 S.E.2d 263, 264 (2020) (citation and quotation marks omitted). “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) (citation omitted).

¶ 15 “In addition to the regular conditions of probation . . . , the court may, as a condition of probation, require that during the probation the defendant . . . [s]atisfy any other conditions determined by the court to be reasonably related to [the defendant’s] rehabilitation.” N.C. Gen. Stat. § 15A-1343(b1)(10) (2021). “Trial courts have wide discretion to formulate conditions under this provision.” *Chadwick*, 271 N.C. App. at 90, 843 S.E.2d at 265 (citation omitted). “The extent to which a condition of probation may be imposed under this provision hinges upon whether the challenged condition bears a reasonable relationship to the offenses committed by the defendant, whether the condition tends to reduce the defendant’s exposure to crime, and whether the condition assists in the defendant’s rehabilitation.” *Id.* (citation and quotation marks omitted).

¶ 16 Here, the trial court, knowing defendant’s prior criminal history, including prior convictions for possession of narcotic equipment and theft, exercised its discretion by imposing as a special condition of probation that defendant submit to a substance abuse assessment. This special condition is reasonably related to defendant’s conviction, would reduce her exposure to crime, and is reasonably related to her rehabilitation. Thus, the trial court did not abuse its discretion, as its decision was neither manifestly unsupported by reason nor entirely arbitrary.

III. Conclusion

STATE V. IRELAND

2022-NCCOA-327

Opinion of the Court

¶ 17 For the foregoing reasons, we find that the trial court did not abuse its discretion in imposing the special condition of probation.

NO ERROR.

Judges COLLINS and JACKSON concur.

Report per Rule 30(e).