

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA22-232

Filed 07 February 2023

Lee County, No. 21 CRS 206

STATE OF NORTH CAROLINA

v.

JAMES DEREK GARY

Appeal by Defendant from Judgment entered 23 November 2021 by Judge Charles W. Gilchrist in Lee County Superior Court. Heard in the Court of Appeals 7 September 2022.

Attorney General Joshua H. Stein, by Assistant Attorney General Alexander H. Ward, for the State.

Jason Christopher Yoder for defendant-appellant.

HAMPSON, Judge.

Factual and Procedural Background

James Derek Gary (Defendant) appeals from the trial court's "Judgment and Commitment Upon Revocation of Probation" (Judgment) entered 23 November 2021 revoking his probation and activating his suspended sentence. The Record before us tends to reflect the following:

On 11 September 2019, Defendant entered an *Alford* plea to one count of Assault with a Deadly Weapon with Intent to Kill and one count of Discharging a Weapon into Occupied Property. The trial court consolidated the two charges into one Judgment and imposed a sentence of 25 to 42 months in prison with an active term of 120 days in custody of the sheriff. Defendant was given credit for 203 days served. Defendant's remaining sentence was suspended for 24 months of supervised probation, beginning 11 September 2019.

On 18 June 2021, Defendant's probation officer, Larry Wilson (Officer Wilson), filed a Violation Report. The Violation Report alleged the following: (1) Defendant willfully violated the terms and conditions of his probation by failing to report to Officer Wilson on 6 July 2020; (2) Defendant failed to make himself available on 14 January 2021 for Officer Wilson to visit him at his listed home address; (3) Defendant was arrested on 27 April 2020 for possession of drug paraphernalia, speeding, reckless driving, and possession of an open container; and (4) Defendant was arrested on 27 April 2020 for possession with intent to manufacture, sell, or distribute a Schedule II controlled substance and maintaining a vehicle or dwelling place for keeping or selling controlled substances.

Officer Wilson requested a probation revocation hearing for 23 August 2021; however, the trial court did not appoint defense counsel to Defendant until 25 August 2021—after the State's requested revocation hearing date. The trial court conducted Defendant's probation revocation hearing on 23 November 2021, more than two

STATE V. GARY

Opinion of the Court

months after Defendant's probationary period expired. During the 23 November 2021 hearing, Defendant admitted the first allegation, failing to report, but denied the remaining allegations. After the hearing, the trial court orally found Defendant violated the conditions of his probation as alleged in violations one, three, and four but made no finding as to allegation number two. Further, the trial court stated, "the court would have revoked probation solely upon the evidence of reckless driving and driving 102 miles per hour, although the court is also reasonably satisfied as to allegation number four."

The trial court found: "a violation report was filed while the defendant was on probation. The defendant violated his probation willfully during the term of probation. Good cause exists for the revocation of probation, given the defendant committed new criminal conduct while on probation." Defendant provided Notice of Appeal in open court.

Issue

The dispositive issue on appeal is whether the trial court erred in revoking Defendant's probation after the expiration of Defendant's probationary period pursuant to N.C. Gen. Stat. § 15A-1344(f)(3).

Analysis

Defendant contends the trial court erred and abused its discretion in finding good cause to revoke his probation after the expiration of Defendant's probationary period. We disagree.

After a probationary 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.

(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) (2021) (emphasis added).

“This Court reviews the trial court’s decision to revoke a defendant’s probation for abuse of discretion. . . . An abuse of discretion occurs when a ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision.” *State v. Crompton*, 270 N.C. App. 439, 442, 842 S.E.2d 106, 109 (2020) (citation and quotation marks omitted). “[T]he [trial] 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 and quotation marks omitted). However, a finding of good cause 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). “‘[I]n

the absence of statutorily mandated factual findings, the trial court’s jurisdiction to revoke probation after expiration of the probationary period is not preserved.’ ” *Id.* at 617-18, 831 S.E.2d at 260 (quoting *State v. Bryant*, 361 N.C. 100, 103, 637 S.E.2d 532, 534 (2006)).

We are guided by our Supreme Court’s recent decision in *State v. Geter*, __ N.C. __, 2022-NCSC-137. In *Geter*, the Supreme Court stated:

“Subsection (f)(2) of N.C.G.S. § 15A-1344 makes clear that in order to revoke a defendant’s probation following the expiration of his probationary term, the trial court must first make a finding that the defendant did violate a condition of his probation. After making such a finding, trial courts are then required by subsection (f)(3) to make an *additional* finding of ‘good cause shown and stated’ to justify the revocation of probation even though the defendant’s probationary term has expired.”

Id. ¶ 7 (quoting *Morgan*, 372 N.C. at 617, 831 S.E.2d at 259). The Supreme Court further clarified:

To avoid interpreting the requirement of N.C.G.S. § 15A-1344(f)(3) that good cause be “shown and stated” as imposing a redundant burden on the State, we hold that the good cause found by the trial court must be “stated” on the record, either in open court by the trial court, by a party with the trial court’s endorsement, or within the trial court record.

Id. ¶ 10. Moreover, “[w]hat constitutes ‘good cause shown and stated’ is a case-by-case, fact-specific determination which requires a trial court to consider the particular circumstances which mandate that good cause be shown.” *Id.* ¶ 13.

In the present case, no party raised the issue of whether good cause existed for the revocation of probation following the expiration of the probationary term. Rather,

the trial court, apparently on its own initiative, recognized the need for this determination. The trial court expressly stated: “The defendant violated his probation willfully during the term of probation. Good cause exists for the revocation of probation, given the defendant committed new criminal conduct while on probation.” Good cause was found by the trial court and expressly stated on the record in open court. Moreover, Defendant raised no objection to this finding in the trial court.

Thus, in accordance with the Supreme Court’s recent decision in *Geter*, the trial court satisfied the requirement of N.C. Gen. Stat. § 15A-1344(f)(3) by both finding good cause and “stating” in open court the basis for its finding of good cause. Further, in the absence of any objection below or contention at the trial level that the facts of this case did not give rise to good cause to revoke probation, we cannot conclude the trial court abused its discretion in making its determination. Therefore, we must conclude the trial court did not abuse its discretion in finding good cause to revoke Defendant’s probation in this case. Consequently, we affirm the trial court’s Judgment revoking Defendant’s probation.

Conclusion

Accordingly, for the foregoing reasons, the Judgment revoking Defendant’s probation and activating his suspended sentence is affirmed.

AFFIRMED.

Judges WOOD and GRIFFIN concur.

STATE V. GARY

Opinion of the Court

Report per Rule 30(e).