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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-723

Filed 21 March 2023

Wake County, Nos. 17CRS220241, 17CRS220317, 17CRS220318

STATE OF NORTH CAROLINA

v.

DARYL LAMONT JONES, Defendant.

Appeal by defendant from judgment entered 28 March 2022 by Judge Craig Croom in Wake County Superior Court. Heard in the Court of Appeals 7 February 2023.

*Attorney General Joshua H. Stein, by Assistant Attorney General Alesia Mikhaulauna Balshakova, for the State-appellee.*

*Yoder Law, PLLC, by Jason Christopher Yoder, for defendant-appellant.*

GORE, Judge.

Defendant Daryl Jones appeals the revocation of his probation, which expired on 21 February 2022. On 21 February 2019, defendant was convicted of multiple crimes through both a guilty plea and a jury trial. Defendant's probation was revoked on 28 March 2022, after a revocation hearing in which the trial court also terminated two judgments with suspended probation sentences. Upon review of the parties'

briefs and the record, we vacate the probation revocation judgment for 17CRS220241, and remand solely for correction of the conceded clerical errors on the vacated judgment.

I.

On 21 February 2019, defendant entered a guilty plea for six charges reduced to the following three charges: two counts of possession with intent to sell or distribute cocaine, and one count of assault on a government official. Defendant was sentenced to ten to twenty-one months imprisonment, suspended for thirty-six months of supervised probation with a special probation intermediate punishment of 120 days active term (“17CRS220241”). On the same day, defendant also had a jury trial for other crimes and was convicted of the following offenses, two counts of assault causing physical injury (“17CRS220317”); one count felony possession of cocaine and one count possession of marijuana up to one-half ounce (“17CRS220318”); and one count resisting a public officer, along with one count injury to personal property (“17CRS220319”).

Defendant received three sentences: for 17CRS220319, defendant was sentenced to sixty days imprisonment; for 17CRS220317, defendant was sentenced to six to seventeen months imprisonment, suspended for thirty-six months supervised probation with a special probation intermediate punishment of 60 days active term; and for 17CRS220318, defendant was sentenced to another six to seventeen months imprisonment, suspended for thirty-six months supervised probation. The trial court

specified defendant would first serve his sixty-day active sentence prior to activating the suspended probation sentences under 17CRS220317–18.

Accordingly, defendant’s supervised probation sentence for 17CRS220241 began 21 February 2019 and expired on 21 February 2022, while the judgment in 17CRS220319 began with a sixty-day active sentence, which delayed the start of the suspended probation for 17CRS220317–18. Thus, the suspended probation sentences for 17CRS220317–18 were not set to expire until 21 April 2022.

During defendant’s supervised probation, multiple violation reports were filed against him. On 29 January 2021, the probation officer filed two violation reports for 17CRS220241 and 17CRS220317–18, which stated defendant violated conditions of his probation by absconding out of state and driving to Sussex County in Virginia without the probation officer’s permission, by receiving charges for a reckless driving misdemeanor and operating a vehicle without a license, and by receiving a charge for felony possession of a controlled substance “with the intent to manufacture, sell, give, or distribute it on 31 December 2020.”

Further, the violation reports stated the Sussex County police officer entered a criminal complaint against defendant, in Sussex County, after finding a white substance, considered to be cocaine, and finding marijuana inside of defendant’s vehicle. On 9 December 2021, the probation officer filed another violation report that restated the same violations from the earlier violation reports. On 17 February 2022, just a few days before the expiration of probation under 17CRS220241, the probation

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officer filed another violation report stating defendant willfully absconded under section 15A-1343(b)(3a). According to the probation officer, defendant was released from the Sussex County jail in Virginia on 12 January 2022, but failed to report to his probation officer and did not communicate his location. The report also stated at the time of the report, “defendant’s whereabouts [were] unknown and all efforts to locate the defendant [had] been unsuccessful.”

Defendant was located on 11 March 2022 when he was arrested by the Wake Forest Police Department. The probation officer made the following efforts to find defendant between 9 February 2022 and 11 March 2022: called the Sussex County jail and discovered defendant was released on 12 January 2022, called the phone numbers in defendant’s file, called local hospitals, checked the Wake County Detention Center website, checked jails in Maryland, South Carolina, and Virginia, checked the “Criminal Justice Law Enforcement Automated Data Services,” visited defendant’s last known address, and finally transferred defendant’s case to “ACE unit” to further investigate defendant’s location. On 17 March 2022, the trial court had its first hearing regarding the violation reports. The trial court explained the potential for revocation and the charges defendant would face; defendant waived his right to counsel. The trial court scheduled a hearing for probation revocation on 28 March 2022.

At the probation revocation hearing on 28 March 2022, after hearing defendant’s arguments the trial court revoked defendant’s probation and activated

the sentence for judgment 17CRS220241, which had already expired on 21 February 2022. The trial judge also terminated the remaining sentences imposed under judgments 17CRS220317–18, although these judgments were still active at the time of the hearing. Defendant gave timely oral notice of appeal.

## II.

Defendant raises the following issues: (1) whether the trial court erred by revoking defendant's probation and activating his sentence; (2) whether the trial court erred in determining defendant willfully absconded from his probation officer; and, (3) whether the trial court made clerical errors on the judgment revoking probation. Because of the ultimate disposition, we only address issues 1 and 3.

### A.

Defendant first challenges the revocation of his probation under 17CRS220241. The thirty-six months of supervised probation expired on 21 February 2022, yet the trial court revoked this probation at the revocation hearing on 28 March 2022. Defendant argues the trial court must apply every factor under Section 15A-1344(f) to revoke probation once probation expires, and that the trial court failed to make a finding of good cause for probation to be revoked per Section 15A-1344(f)(3). We agree.

We recently decided a case dealing with a violation of Section 15A-1344(f)(3). We stated the following:

This issue is preserved for appellate review without objection entered

upon the ruling because § 15A-1344(f)(3) is a statutory mandate that requires the trial judge to make a specific finding before revoking probation after expiration of the probationary period. *State v. Morgan*, 372 N.C. 609, 617, 831 S.E.2d 254, 259 (2019); *see also State v. Ashe*, 314 N.C. 28, 39, 331 S.E.2d 652, 659 (1985) (“[W]hen a trial court acts contrary to a statutory mandate and a defendant is prejudiced thereby, the right to appeal the court’s action is preserved, notwithstanding defendant’s failure to object at trial.”).

“Alleged statutory errors are questions of law, and as such, are reviewed *de novo*.” *State v. Mackey*, 209 N.C. App. 116, 120, 708 S.E.2d 719, 721, (internal citation omitted), *rev. denied*, 365 N.C. 81, 707 S.E.2d 385 (2011) [(Mem)].

The statute provides:

The court may extend, modify, or revoke probation after the expiration of the period of probation if all of the following apply:

- (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) (2022).

*State v. Lytle*, No. COA22-675, 2023 WL 2125394, at \*1 (N.C. Ct. App. Feb. 21, 2023).

Section 15A-1344(f) explicitly states all three factors must be satisfied prior to the trial court exercising authority to “extend, modify, or revoke probation after the expiration of the period of probation.” § 15A-1344(f). In previous cases, our Supreme

Court has made it plain that the existence of these factors establishes the trial court's jurisdiction to then revoke probation, and that each factor is "separate and distinct from one another." *State v. Geter*, \_\_ N.C. \_\_, \_\_, 881 S.E.2d 209, 213 (2022); *State v. Bryant*, 361 N.C. 100, 103, 637 S.E.2d 532, 534 (2006); *State v. Camp*, 299 N.C. 524, 528, 263 S.E.2d 592, 595 (1980). Our Supreme Court interpreted the meaning and application of this statutory mandate in both *Morgan* and recently, in *Geter*. In *Morgan*, the Court held section 15A-1344(f)(3) was a distinct factor that required the trial court "to make an *additional* finding of 'good cause shown and stated'" prior to "revo[cation] [of] a defendant's probation following the expiration of his probationary term." 372 N.C. at 617, 831 S.E.2d at 259. In *Geter*, the Court reiterated the holding from *Morgan*. *Geter*, \_\_ N.C. at \_\_, 881 S.E.2d at 213. The Supreme Court went on to discuss the legal sufficiency of "good cause" once the trial court includes it on the record. *Id.* at \_\_, 881 S.E.2d at 215.

In the present case, section 15A-1344(f) applies because the trial court revoked the probation for judgment 17CRS220241, thirty-five days beyond expiration, rather than judgments 17CRS220317–18, which had not yet expired. Further, the trial court terminated judgments 17CRS220317–18, therefore, only the expired judgment 17CRS220241 is before this Court for consideration of probation revocation. Neither party contends, and the record is devoid of any findings made by the trial court to satisfy section 15A-1344(f)(3). Accordingly, the trial court failed to make findings for "good cause." § 15A-1344(f)(3).

Once this Court determines the trial court lacked jurisdiction by not applying the requisite factors, the only question left to consider is whether to vacate or to vacate and remand for further findings. *Morgan*, 372 N.C. at 617–18, 831 S.E.2d at 260. Our Supreme Court suggested that we should look to the record and determine whether “evidence exists that would allow the trial court on remand to make a finding of ‘good cause shown and stated’ under subsection (f)(3).” *Id.* at 618, 831 S.E.2d at 260. Upon review of the record in the present case, we determine it lacks evidence upon which to make such a finding on remand. Therefore, we vacate the judgment in 17CRS220241 and commitment upon revocation of probation entered on 28 March 2022.

**B.**

Defendant also argues, and the State concedes, that clerical errors were made upon the 17CRS220241 judgment. Specifically, the judgment stated defendant waived his right to a hearing, defendant admitted to violating the violation reports, and that defendant violated paragraphs 1–4 of the 29 January 2021 violation report. However, defendant was present at the hearing, he did not waive the hearing, defendant never “admitted he violat[ed] the conditions of his probation,” and he was only found to have violated paragraph 1 of the 29 January 2021 violation report since the State chose not to produce evidence for paragraphs 2–4 of that report. “Where the trial court’s findings made in open court do not align with the findings made in its written judgment, our Court will remand for correction of the written judgment.”



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*State v. Crompton*, 270 N.C. App. 439, 450, 842 S.E.2d 106, 114–15 (2020). Both the State and defendant agree these were clerical errors that do not reflect what was stated at the hearing. Accordingly, we remand solely for the trial court to amend the judgment to reflect what was determined in open court.

**III.**

For the foregoing reasons, we vacate the judgment in 17CRS220241 in part, and remand solely to correct the stipulated clerical errors on the vacated judgment.

VACATED IN PART AND REMANDED.

Judges TYSON and ZACHARY concur.

Report per Rule 30(e).