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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-292

Filed 05 September 2023

Cherokee County, No. 17 CRS 050777

STATE OF NORTH CAROLINA

v.

ROBBIE DALE PARRY, Defendant.

Appeal by Defendant from judgment entered 25 October 2022 by Judge William H. Coward in Cherokee County Superior Court. Heard in the Court of Appeals 8 August 2023.

Attorney General Joshua H. Stein, by Assistant Attorney General Maria E. Bruner, for the State.

Appellant Defender Glenn Gerding, by Assistant Appellant Defender James R. Grant, for Defendant.

GRIFFIN, Judge.

Defendant Robbie Dale Parry appeals from judgments entered after the trial court revoked her probation. Defendant argues the trial court erred in revoking her probation, after her probationary term had expired, without making a finding for good cause. We hold the trial court erred in failing to make a finding for good cause

pursuant to N.C. Gen. Stat. § 15A-1344(f)(3). We remand to the trial court for proper findings.

I. Factual and Procedural Background

On 3 August 2020, Defendant pled guilty to several charges and was sentenced to two consecutive terms of 11-23 months' imprisonment, suspended for 24 months' probation. On 3 August 2022, Defendant's probationary period ended. On 25 October 2022, the trial court held a hearing on probation violation reports filed against Defendant on 28 April 2022. The trial court found Defendant committed new misdemeanor offenses and revoked her probation, activating her suspended sentences. Defendant filed notice of appeal 7 November 2022.

II. Standard of Review

We review a trial court's determination made in reliance upon its interpretation of a statute de novo. *State v. Johnson*, 246 N.C. App. 132, 134, 782 S.E.2d 549, 551 (2016). This is because "matters of statutory interpretation necessarily present questions of law." *Id.* at 134, 782 S.E.2d at 552 (quoting *Moore v. Proper*, 366 N.C. 25, 30, 726 S.E.2d 812, 817 (2012)). "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. Williams*, 362 N.C. 628, 632–33, 669 S.E.2d 290, 294 (2008) (emphasis and internal marks and citations omitted).

III. Analysis

Defendant contends the trial court erred in revoking her probation after her

probationary term had expired, without first making a finding for good cause pursuant to N.C. Gen. Stat. § 15A-1344(f)(3).¹ We agree.

Our North Carolina General Statute, section 15A-1344(f), permits a trial court to extend, modify, or revoke a defendant's probation after the expiration of the defendant's probationary period only if the trial court, among other things, makes a finding for good cause shown and states the probation should be extended, modified, or revoked. N.C. Gen. Stat. § 15A-1344(f)(3) (2021). Thus, "[i]n the absence of the statutorily mandated factual finding of good cause, the trial court's jurisdiction to revoke probation after expiration of the probationary period is not preserved." *State v. Geter*, 276 N.C. App. 377, 379, 856 S.E.2d 916, 917 (2021) (internal marks and citations omitted). However, where we are unable, upon review, to specifically state "no evidence exists that would allow the trial court on remand to make a finding of 'good cause shown and stated' under subsection (f)(3)[,] . . . [we] remand to the trial court" to determine and make a finding as to whether good cause exists to revoke the defendant's probation. *State v. Morgan*, 372 N.C. 609, 618, 831 S.E.2d 254, 260 (2019); *see also State v. Bryant*, 361 N.C. 100, 104, 637 S.E.2d 532, 535 (2006) ("Ordinarily when [there is a failure] to make a material finding of fact . . . , the case must be remanded . . . for a proper finding[.]" (citations omitted)).

¹ The State concedes the trial court erred in failing to make the requisite finding for good cause and requests we remand to the trial court for proper findings for good cause in accordance with N.C. Gen. Stat. § 15A-1344(f)(3).

Here, Defendant's probation expired on 3 August 2022. At a hearing on 25 October 2022, the trial court revoked Defendant's probation, yet failed to make any oral or written finding for good cause. Because the trial court failed to make a finding for good cause before revoking Defendant's probation, pursuant to N.C. Gen. Stat. § 15A-1344(f)(3), the trial court erred. Thus, we remand to the trial court for further findings.

IV. Conclusion

For the aforementioned reasons, we remand for further findings in accordance with N.C. Gen. Stat. § 15A-1344(f)(3).

REMANDED.

Chief Judge STROUD and Judge ARROWOOD concur.

Report per Rule 30(e).