

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA23-247

Filed 19 September 2023

Forsyth County, No. 21CRS53428

STATE OF NORTH CAROLINA

v.

SHELDON O'BRIAN MCSPADDEN, Defendant.

Appeal by defendant from judgment and orders entered 15 August 2022 by Judge Athena F. Brooks in Forsyth County Superior Court. Heard in the Court of Appeals 29 August 2023.

Attorney General Joshua H. Stein, by Assistant Attorney General Ashton H. Roberts, for the State-appellee.

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

PER CURIAM.

On 29 July 2021, defendant Sheldon McSpadden pled guilty to one count of attempted interfering with an electronic monitoring device and was sentenced to 6 to 17 months in prison, all suspended for 12 months of supervised probation. On 2 May 2022, two violation reports were filed in Forsyth County District Court. On 29 July 2022, defendant's probation expired. After a hearing on 15 August 2022, the trial

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court entered an order extending defendant's probation by 18 months and ordering defendant to serve a 127-day sentence of special probation.

After the hearing, defendant, acting *pro se*, timely filed seven handwritten notices of appeal. However, all seven notices of appeal did not indicate that they were served on the State as required by Rule 4 of the North Carolina Rules of Appellate Procedure. *See* N.C.R. App. P. 4(a). On 17 April 2023, defendant filed two petitions for writ of certiorari seeking a belated appeal of the trial court's order modifying probation and order extending probation. In the exercise of our discretion, we issue our writ to permit review of the trial court's order and judgment modifying defendant's probation and order extending probation entered 15 August 2022. N.C.R. App. P. 21(a)(1); N.C. Gen. Stat. § 7A-32(c) (2022).

Defendant argues, and the State concedes, that (i) the trial court lacked jurisdiction to extend defendant's probation pursuant to N.C. Gen. Stat. section 15A-1344(d); (ii) erred when it failed to make a finding of good cause to modify defendant's probation after the probationary period expired, in violation of N.C. Gen. Stat. section 15A-1344(f); and (iii) the appropriate remedy is to vacate the trial court's entire order without remand. We agree. *See State v. Lytle*, ___ N.C. App. ___, ___, 883 S.E.2d 655, 657 (2023); *State v. Sasek*, 271 N.C. App. 568, 575, 844 S.E.2d 328, 334 (2020).

VACATED.

Panel consisting of:

Judges TYSON, CARPENTER, and GORE.

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Report per Rule 30(e).