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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-356

Filed 3 October 2023

Davidson County, Nos. 18 CRS 57302; 20 CRS 54530; 20 CRS 55347

STATE OF NORTH CAROLINA

v.

SAMANTHA DALE BLACK, Defendant.

Appeal by Defendant from judgment entered 10 August 2022 by Judge Lori I. Hamilton in Davidson County Superior Court. Heard in the Court of Appeals 22 August 2023.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Daniel P. O'Brien & Assistant Attorney General Miranda Shanice Holley, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Katy Dickinson-Schultz, for Defendant-Appellant.

CARPENTER, Judge.

Samantha Dale Black (“Defendant”) appeals from the trial court’s judgment revoking her probation. On appeal, Defendant argues the trial court erred in revoking her probation because the trial court lacked the statutory authority to do so. After careful review, we agree with Defendant. Therefore, without remand, we vacate the trial court’s revocation and its corresponding prison sentence.

I. Factual & Procedural Background

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On 9 July 2019, a Davidson County grand jury indicted Defendant for possessing drugs and drug paraphernalia. On 7 August 2019, Defendant pleaded guilty to one count of possession of heroin, two counts of possession of drug paraphernalia, one count of possession of methamphetamine, and one count of possession of a Scheduled II controlled substance. These charges correspond to case numbers 18 CRS 57302–4. In response to Defendant’s plea and pursuant to N.C. Gen. Stat. § 90-96, the Honorable Mark Klass entered a conditional discharge and placed Defendant on twelve months of supervised probation (the “90-96 Probation”), expiring on 7 August 2020.

At a hearing on 9 February 2021, after Defendant’s 90-96 Probation expired and before Defendant’s probation officer filed any violation reports, the trial court modified Defendant’s 90-96 Probation. The trial court activated the original sentence, extending Defendant’s 90-96 Probation to twenty-four months. On the same day, Defendant pleaded guilty to additional charges: one count of possession of methamphetamine and two counts of possession of heroin. The trial court accepted Defendant’s pleas and sentenced her to additional probation, distinct from her original 90-96 Probation and irrelevant to this appeal.

Defendant’s probation officer eventually filed probation-violation reports concerning her 90-96 Probation on 9 March 2022, 6 May 2022, and 1 June 2022. On 8 August 2022, two years after the expiration of Defendant’s 90-96 Probation, this case came before the Honorable Lori Hamilton at a probation-revocation hearing. On

10 August 2022, the trial court revoked Defendant's probation in all cases,¹ including Defendant's 90-96 Probation, and sentenced Defendant to three consecutive prison sentences, including six to seventeen months concerning case number 18 CRS 57302.

Defendant failed to orally appeal at the 10 August hearing. Acting pro se, Defendant handwrote additions to a preprinted notice-of-appeal form that she filed on 23 August 2022. The form contained no proof that the notice was served on the State.

II. Jurisdiction

This Court would generally have jurisdiction of this case pursuant to N.C. Gen. Stat. §§ 15A-1347(a), 7A-27(b)(4) (2021). Defendant, however, concedes she failed to comply with the requirements for serving a valid notice of appeal. See N.C. R. App. P. 4(a)–(b) (requiring a written notice of appeal be served on all adverse parties, designate the judgment from which appeal is taken, and specify the court to which appeal is taken). Her failure to adhere to Rule 4 deprives this Court of jurisdiction. *State v. Hughes*, 210 N.C. App. 482, 484, 707 S.E.2d 777, 778 (2011). Consequently, Defendant petitions for a writ of certiorari.

This Court has the discretion to grant Defendant's petition and review her case, despite her procedural missteps. See N.C. Gen. Stat. § 7A-32(c) (2021); N.C. R. App. P. 21(a); *State v. McCoy*, 171 N.C. App. 636, 638, 615 S.E.2d 319, 320 (2005).

¹ Defendant only appeals the revocation of her 90-96 Probation.

We may grant petitions when they show “merit or that error was probably committed below.” *State v. Grundler*, 251 N.C. 177, 189, 111 S.E.2d 1, 9 (1959). We hereby grant Defendant’s petition and review her case because, as detailed below, the trial court erred in revoking Defendant’s 90-96 Probation. *See id.* at 189, 111 S.E.2d at 9.

III. Issue

The issue on appeal is whether the trial court erred in revoking Defendant’s 90-96 Probation.

IV. Analysis

Defendant argues the trial court erred because the court failed to make the required findings and thus lacked jurisdiction to extend or revoke her 90-96 Probation. We agree.

A trial court’s ability to review a probationer’s compliance with the conditions of his or her probation is limited by statute. *State v. Hicks*, 148 N.C. App. 203, 204, 557 S.E.2d 594, 595 (2001). We review whether a trial court violated a statutory mandate in a probation revocation proceeding de novo. *State v. Knox*, 239 N.C. App. 430, 432, 768 S.E.2d 381, 383 (2015). Under de novo review, we consider the matter anew and substitute our own judgment for that of the lower court. *State v. Graham*, 283 N.C. App. 271, 274, 872 S.E.2d 573, 576 (2022).

“Upon the expiration . . . of a period of probation imposed after deferral of prosecution and before conviction or a conditional discharge, the defendant shall be immune from prosecution of the charges deferred or discharged and dismissed.” N.C.

Gen. Stat. § 15A-1342(i) (2021). Under N.C. Gen. Stat. § 90-96(a), a trial court may enter an adjudication of guilt upon the defendant’s violation of a condition of probation. *Id.* § 90-96(a). And under N.C. Gen. Stat. § 15A-1344(a) (2021), probation may be “reduced, terminated, continued, extended, modified, or revoked” upon violation of a probation condition. *Id.* § 15A-1344(a). After a probation expires, however, a court:

may extend, modify, or revoke 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.
- (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 [N.C. Gen. Stat. §] 15A-1342(a).

Id. § 15A-1344(f).

Concerning N.C. Gen. Stat. § 15A-1344(f), the North Carolina Supreme Court has said:

when the General Assembly has inserted the phrase “the court finds” in a statute setting out the exclusive circumstances under which a defendant’s probation may be revoked, the specific finding described in the statute must actually be made by the trial court and 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). Generally, when a trial court fails to make a material finding, we remand the case so the trial court can make a proper finding. *See State v. Bryant*, 361 N.C. 100, 104, 637 S.E.2d 532, 535 (2006). We only remand, however, when “the record contain[s] sufficient evidence” to support the necessary findings. *Morgan*, 372 N.C. at 618, 831 S.E.2d at 260; *Bryant*, 361 N.C. at 105, 637 S.E.2d at 536 (affirming a vacatur, without remand, of a judgment revoking the defendant’s probation after its expiration because the trial court made no finding that good cause existed, the court failed to hold the probation hearing on an earlier scheduled date, and “the record fail[ed] to disclose any specific reason for this failure”).

Here, Defendant’s 90-96 Probation expired on 7 August 2020, and Defendant’s probation officer did not file violation reports until 9 March 2022. Yet on 9 February 2021, months after the expiration of Defendant’s 90-96 Probation, the trial court activated the original sentence, extending Defendant’s 90-96 Probation to twenty-four months. Additionally, two years after Defendant’s 90-96 Probation expired, the trial court revoked Defendant’s 90-96 Probation and ordered her to serve three consecutive prison sentences, including one sentence concerning case number 18 CRS 57302, which is the basis for Defendant’s 90-96 Probation.

Because the trial court filed both the 9 February 2021 order and the 10 August 2022 order after Defendant’s 90-96 Probation expired, the trial court needed to abide by N.C. Gen. Stat. § 15A-1344(f) in both orders. *See* N.C. Gen. Stat. § 15A-1344(f).

Defendant's probation officer, however, failed to file violation reports "[b]efore the expiration of the period of [Defendant's 90-96 Probation]." *See id.* § 15A-1344(f)(1). Further, in both orders, the trial court failed to mention that Defendant's probation expired, failed to find a "good cause" to modify Defendant's probation after expiration, and failed to explain the delay in modification. Therefore, the trial court erred both by extending and revoking Defendant's 90-96 Probation because it failed to make the proper findings in both orders, thus depriving the court of jurisdiction. *See id.* § 15A-1344(f).

Moreover, the record lacks sufficient evidence for the trial court to have made the necessary findings: Defendant's probation officer failed to file violation reports before her 90-96 Probation expired. *See id.* Thus, the proper remedy is to vacate the judgment concerning the 90-96 Probation without remand. *See Bryant*, 361 N.C. at 105, 637 S.E.2d at 536. Accordingly, without remand, we vacate the trial court's revocation of Defendant's 90-96 Probation and her corresponding prison sentence. *See id.* at 105, 637 S.E.2d at 536; N.C. Gen. Stat. § 15A-1342(i).

V. Conclusion

We hold the trial court erred in revoking Defendant's 90-96 Probation. The trial court failed to make the required findings and thus lacked jurisdiction when it first extended the 90-96 Probation. For the same reasons, the trial court also lacked jurisdiction when it later revoked the 90-96 Probation. Further, the record cannot support the findings necessary to establish jurisdiction for either order. Therefore,

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without remand, we vacate the trial court's revocation of Defendant's 90-96 Probation and her corresponding prison sentence concerning case number 18 CRS 57302.

VACATED.

Judges ARROWOOD and COLLINS concur.

Report per Rule 30(e).