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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-849

Filed 19 March 2024

Forsyth County, No. 18 CRS 60008

STATE OF NORTH CAROLINA

v.

RAHEIM TYQUAN LEGGETTE

Appeal by defendant from judgment entered 28 February 2023 by Judge Patrick Thomas Nadolski in Forsyth County Superior Court. Heard in the Court of Appeals 20 February 2024.

Attorney General Joshua H. Stein, by Assistant Attorney General Reginaldo E. Williams, Jr., for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Aaron Thomas Johnson, for defendant-appellant.

ZACHARY, Judge.

Defendant Raheim Tyquan Leggette appeals from the trial court's judgment revoking his probation and activating his suspended sentence. The State concedes, and we agree, that the trial court failed to make the requisite statutory finding to revoke Defendant's probation after his probationary term had expired. Therefore, we

vacate the judgment and remand to the trial court.

BACKGROUND

On 28 February 2019, the trial court entered judgment against Defendant in 18 CRS 59930-31 and 18 CRS 59934, sentencing him to an active term of 12 to 24 months in the custody of the North Carolina Division of Adult Correction, with credit given for 124 days spent in custody prior to entry of the judgment as a result of the charges. The same day, the trial court entered judgment suspending sentence against Defendant in 18 CRS 60008, 18 CRS 731822, and 18 IF 713935 and placing Defendant on supervised probation for a period of 30 months, to begin upon Defendant’s release from the active sentence imposed in 18 CRS 509930. Defendant was released from incarceration—and his 30-month probationary term began—on 6 November 2019.

The State filed probation violation reports on 3 November 2021, 8 December 2021, and 17 February 2022. The 17 February 2022 report stated that Defendant had violated, *inter alia*, the condition of his probation that he “[c]ommit no criminal offense in any jurisdiction[.]”

Defendant’s probation violation matter did not come on for hearing until 28 February 2023, nearly nine months after Defendant’s probationary term had ended in May 2022. Defendant did not object to the timeliness of the revocation at the probation violation hearing, and admitted to having committed the violations alleged in the State’s 17 February 2022 report.

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On 28 February 2023, the trial court entered judgment revoking Defendant's probation and activating his suspended sentence in 18 CRS 60008, 18 CRS 731822, 18 IF 713935, and 18 IF 713955. The trial court ordered that Defendant be incarcerated for 12 to 24 months in the custody of the North Carolina Department of Adult Correction, with credit given for the 148 days that Defendant served prior to entry of the revocation order following the State's filing of the 17 February 2022 violation report.

Defendant filed timely written notice of appeal.

DISCUSSION

Defendant argues that the "trial court reversibly erred by revoking [his] probation more than nine months after his probation had expired without making a finding of 'good cause' as required by" N.C. Gen. Stat. § 15A-1344(f)(3). Defendant maintains that "in the absence of an explicit finding of 'good cause,' [the] trial court lack[ed] the authority to revoke [his] probation after it ha[d] expired."

"[W]hether a trial court has the authority to revoke a defendant's probation after the defendant's term of probation has expired is a jurisdictional question." *State v. Geter*, 383 N.C. 484, 488, 881 S.E.2d 209, 213 (2022). Thus, the issue is preserved for appellate review notwithstanding a defendant's failure to object. *State v. Lytle*, 287 N.C. App. 657, 658, 883 S.E.2d 655, 656 (2023) ("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.”). “We review issues relating to subject matter jurisdiction de novo.” *Geter*, 383 N.C. at 489, 881 S.E.2d at 213 (citation omitted).

“[A] trial court may, at any time during the period of probation, require [a] defendant to appear before it, inquire into alleged violations of the conditions, and, if found to be true, place [a] suspended sentence into effect.” *State v. Morgan*, 372 N.C. 609, 613, 831 S.E.2d 254, 257 (2019) (cleaned up). “But the trial court may not do so after the expiration of the period of probation except as provided in G.S. 15A-1344(f).” *Id.* (cleaned up).

N.C. Gen. Stat. § 15A-1344(f) governs the “Extension, Modification, or Revocation after Period of Probation.” It provides:

The court may . . . 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) (2023) (emphasis added).

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In *Morgan*, our Supreme Court “conclude[d] that the trial court’s order failed to comply with N.C.G.S. § 15A-1344(f)(3)” in that the trial court revoked the “defendant’s probation without making a specific finding that good cause existed to do so despite the expiration of his probationary period.” 372 N.C. at 613, 831 S.E.2d at 257. “[T]he 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.” *Id.* at 616, 831 S.E.2d at 259.

Here, the State concedes that “the trial court was required to find that there was good cause to revoke [Defendant’s] probation after the probation end date[,]” and that “[b]ecause the trial court did not make the good cause finding, [the] court did not have jurisdiction to revoke [Defendant’s] probation.” We agree.

Accordingly, we must vacate the trial court’s judgment revoking probation for lack of subject-matter jurisdiction. “[T]he only remaining question is whether remand to the trial court is appropriate for it to determine whether good cause exists to revoke [Defendant’s] probation despite the expiration of his probationary period and, if so, to make an appropriate finding of fact as required by subsection (f)(3).” *Id.* at 617, 831 S.E.2d at 260.

From our review of the record, “we are unable to say . . . that 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).” *Id.* at 618, 831 S.E.2d at 260. Thus, we “remand to the trial court for a finding of whether good cause exists to revoke [Defendant’s]

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probation despite the expiration of his probationary period and—assuming good cause exists—to make a finding in conformity with N.C.G.S. § 15A-1344(f)(3).” *Id.* It is within the trial court’s discretion whether to conduct a further hearing on remand.

In addition, the trial court’s judgment revoking probation erroneously listed the case number of one of Defendant’s offenses as 18 IF 713955; it is clear from the original judgment that the trial court should have listed it as 18 IF 713935. Since this error “result[s] from a minor mistake or inadvertence . . . in writing or copying something on the record,” it is clerical in nature. *State v. Allen*, 249 N.C. App. 376, 380, 790 S.E.2d 588, 591 (2016) (citation omitted). Accordingly, “it is appropriate to remand the case to the trial court for correction because of the importance that the record speak the truth.” *Id.* at 379, 790 S.E.2d at 591 (citation omitted).

CONCLUSION

For the reasons stated herein, we vacate the trial court’s judgment revoking Defendant’s probation and activating his suspended sentence and remand to the trial court for further proceedings not inconsistent with this opinion and to correct the clerical error described above.

VACATED AND REMANDED.

Judges GORE and GRIFFIN concur.

Report per Rule 30(e).