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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-867

Filed 7 May 2024

Mitchell County, No. 21 CRS 50241

STATE OF NORTH CAROLINA

v.

JONATHAN SCOTT CARPENTER

Appeal by defendant by writ of certiorari from judgment entered 13 December 2022 by Judge Richard L. Doughton in Mitchell County Superior Court. Heard in the Court of Appeals 16 April 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 Wyatt Orsbon, for defendant-appellant.

ZACHARY, Judge.

Defendant Jonathan Scott Carpenter appeals from the trial court's judgment revoking his probation and activating the original sentence. After careful review, we remand to the trial court for a determination of whether good cause exists to revoke

Defendant's probation despite the expiration of his probationary period, in accordance with N.C. Gen. Stat. § 15A-1344(f)(3) (2023).

I. Background

On 29 November 2021, Defendant pleaded guilty to charges of felony possession of methamphetamine and misdemeanor possession of drug paraphernalia. That same day, Defendant entered into a conditional discharge agreement, pursuant to which the trial court entered a conditional discharge and placed Defendant on 12 months of supervised probation.

On 16 September 2022, the State filed two probation violation reports alleging various violations of the conditions of probation and setting a hearing for 3 November 2022; however, it did not come on for hearing until 13 December 2022. At the probation hearing on 13 December 2022, the trial court determined that Defendant violated the conditions of his probation and revoked Defendant's conditional discharge. The court then consolidated Defendant's two convictions into a single judgment, sentenced Defendant to 6 to 17 months in the custody of the North Carolina Division of Adult Correction, suspended the sentence, and placed Defendant on 12 months of supervised probation.

On 28 December 2022, 15 days after the trial court's judgment was entered, Defendant filed a handwritten, pro se notice of appeal. However, Defendant failed to designate the court to which he intended to appeal or to file a certificate of service or other evidence that he had served his notice of appeal on the State.

II. Appellate Jurisdiction

On 20 November 2023, acknowledging the deficiencies in his notice of appeal, Defendant petitioned this Court to issue its writ of certiorari to review the judgment. “Certiorari is a discretionary writ, to be issued only for good and sufficient cause shown.” *State v. Grundler*, 251 N.C. 177, 189, 111 S.E.2d 1, 9 (1959), *cert. denied*, 362 U.S. 917, 4 L. Ed. 2d 738 (1960). “A petition for the writ must show merit or that error was probably committed below.” *Id.*

Rule 4 of the North Carolina Rules of Appellate Procedure provides that an appellant in a criminal action may appeal by “filing notice of appeal . . . and serving copies thereof upon all adverse parties within fourteen days after entry of the judgment[.]” N.C.R. App. P. 4(a)(2). Rule 4 also requires that an appellant’s notice of appeal “designate . . . the court to which appeal is taken[.]” N.C.R. App. P. 4(b). However, this Court has recognized that “defect[s] in a notice of appeal should not result in loss of the appeal as long as the intent to appeal can be fairly inferred from the notice and the appellee is not misled by the mistake.” *State v. Springle*, 244 N.C. App. 760, 763, 781 S.E.2d 518, 521 (2016) (cleaned up).

Here, Defendant’s intent to appeal to this Court may be “fairly inferred” from his notice, *id.* (citation omitted), and the State does not contend that it was misled by the notice’s defects. Neither does the State assert that it was prejudiced by the untimeliness of Defendant’s notice of appeal. *See, e.g., State v. Wright*, 290 N.C. App. 465, 470, 892 S.E.2d 253, 259 (2023) (recognizing that this Court, in its discretion,

may issue its writ of certiorari when “the right to prosecute an appeal has been lost by failure to take timely action”).

Additionally, as discussed below, the State concedes that the trial court erred by revoking Defendant’s probation without making a finding of good cause shown to revoke the probation. It is manifest, then, that Defendant’s petition “show[s] merit or that error was probably committed below.” *Grundler*, 251 N.C. at 189, 111 S.E.2d at 9. Therefore, in the exercise of our discretion, we allow Defendant’s petition and proceed to review the merits of his appeal.

III. Discussion

On appeal, Defendant contends that “[b]ecause [his] period of probation had already expired, the trial court was required by statute to make a finding that good cause justified revoking his probation”; in that the court did not make such a finding, it lacked subject-matter jurisdiction “to revoke [his] completed probation[.]”

A. Standard of Review

This Court reviews whether a trial court had subject-matter jurisdiction to revoke a defendant’s probation de novo. *State v. Guinn*, 281 N.C. App. 446, 450, 868 S.E.2d 672, 676 (2022). Accordingly, “this Court considers the matter anew and freely substitutes its own judgment for that of the lower tribunal.” *Id.* (citation omitted).

B. Analysis

Section 90-96 provides for the conditional discharge of a first offense in certain limited circumstances. “[W]ith the consent of the person,” the court shall “defer

further proceedings and place the person on probation upon such reasonable terms and conditions as it may require[.]” N.C. Gen. Stat. § 90-96(a). “Upon fulfillment of the terms and conditions [of probation], the court shall discharge the person and dismiss the proceedings”; upon a defendant’s violation of a condition of probation, “the court may enter an adjudication of guilt and proceed as otherwise provided.” *Id.*

However, “[o]ther than as provided in N.C. Gen. Stat. § 15A-1344(f), a trial court lacks jurisdiction to revoke a defendant’s probation after the expiration of the probationary term.” *Guinn*, 281 N.C. App. at 450, 868 S.E.2d at 676 (cleaned up). “The requirement contained in N.C. Gen. Stat. § 15A-1344(f) . . . appl[ies] to N.C. Gen. Stat. § 90-96” *State v. Burns*, 171 N.C. App. 759, 760–61, 615 S.E.2d 347, 348 (2005). This case specifically concerns § 15A-1344(f)(3), which requires that in order to retain its jurisdiction to extend, modify, or revoke a defendant’s probation, the trial court must “find[] for good cause shown and stated that the probation should be extended, modified, or revoked.” N.C. Gen. Stat. § 15A-1344(f)(3).

In *State v. Morgan*, our Supreme Court held that a trial court improperly revoked a defendant’s probation after his probationary period had expired by not “making a specific finding that good cause existed to do so despite the expiration of his probationary period.” 372 N.C. 609, 613, 831 S.E.2d 254, 257 (2019). The Court explained that “the specific finding described in [N.C. Gen. Stat. § 15A-1344(f)(3)] 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.

In the case at hand, although the probation violation reports were filed within the period of Defendant's probation, the State concedes that the trial court did not make a finding that there was good cause to revoke Defendant's probation after his probationary period ended. Accordingly, "the only remaining question is whether remand to the trial court is appropriate for it to determine whether good cause exists to revoke [D]efendant'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.

Like the *Morgan* Court, "we are unable to say from our review of the record 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 (quoting N.C. Gen. Stat. § 15A-1344(f)(3)), particularly in light of the brief delay of the hearing to a date after the expiration of Defendant's probation. As a result, we "remand to the trial court for a finding of whether good cause exists to revoke [D]efendant's probation despite the expiration of his probationary period and—assuming good cause exists—to make a finding in conformity with [N.C. Gen. Stat.] § 15A-1344(f)(3)." *Id.*

IV. Conclusion

For the foregoing reasons, we remand to the trial court for further proceedings not inconsistent with this opinion.

REMANDED.

STATE V. CARPENTER

Opinion of the Court

Judges COLLINS and FLOOD concur.

Report per Rule 30(e).