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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-229

Filed 3 September 2024

Cherokee County, Nos. 17 CRS 50777, 50989

STATE OF NORTH CAROLINA

v.

ROBBIE DALE PARRY, Defendant.

Appeal by Defendant from judgment entered 27 October 2023 by Judge William H. Coward in Cherokee County Superior Court. Heard in the Court of Appeals 19 August 2024.

*Attorney General Joshua H. Stein, by Assistant Attorney General Maria B. Lattimore, for the State.*

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

PER CURIAM.

Defendant appeals from trial court's judgments revoking her probation entered two months after Defendant's term of probation had expired. We affirm.

**I. Background**

On 3 August 2020, Defendant pled guilty to two counts of obtaining property

by false pretenses. Defendant was sentenced to eleven to twenty-three months of imprisonment for each count, to be served consecutively. The sentencing was suspended, and Defendant was placed on twenty-four months of supervised probation. Defendant's probationary term was set to expire on 3 August 2022.

On 14 April 2022, Defendant pled guilty to two counts of misdemeanor larceny and one count of common law uttering. In a second case on that same day, Defendant pled guilty to an additional misdemeanor larceny charge. On 28 April 2022, Defendant's probation officer filed and served Defendant with probation violations based on her 14 April 2022 convictions.

Defendant's probation violation hearing was set for 1 August 2022 but was not held until 25 October 2022, about two and a half months after Defendant's probationary term expired. At the hearing, the district court found that Defendant had violated her probation conditions by committing four new criminal offenses—three counts of misdemeanor larceny and one count of common law uttering from 14 April 2022. Defendant's probation was revoked, and her suspended sentences were activated. Defendant appealed.

On 5 September 2023, our Court issued an opinion vacating the trial court's revocation order and remanding the matter for more findings. *See State v. Parry*, No. COA23-292, 2023 WL 5691012, at \*2 (N.C. Ct. App. Sept. 5, 2023) (unpublished). We stated that “[b]ecause the trial court failed to make a finding for good cause before revoking Defendant's probation [as his term of probation had expired], the trial court

erred.” *Id.* This Court remanded for proper findings of “good cause.” *Id.*

On 23 October 2023, trial court conducted a hearing on remand. Though the trial court initially appeared confused as to our instructions, stating “I don’t understand what the Court of Appeals is trying to remediate here,” upon further deliberation, the court stated:

I’m going to find that good cause existed to revoke the probation. Good cause was shown on the day it was revoked on October, 25 ’22; that the defendant admitted to committing new criminal offenses, more than, one; and that it was appropriate to revoke her probation on that day; and that it should have been revoked on that day.

I’ll further find under subsection (f) that the probation department had filed a written violation report prior to the expiration of the period of probation. And I find that the violation report was set for the very next court date.

And I’ll note for the benefit of the appellate division that we don’t have a whole lot of court dates here, so it was set for the next court date that was available. Through no fault of anybody, the Court declined that -- it was unaware that her probation was going to expire two days after that first court date; that the court appointed counsel for the defendant; and that the matter was taken care of the very next court date.

With that said, knowing that she failed to appear on the first day of that session, so it was taken care on the second day of that session.

The Court will find that the probation did in fact violate one or more conditions of probation prior to the expiration period of probation.

I think I’ve made enough findings of good cause shown that probation should be revoked.

Further, the trial court's written order made the following findings of fact on the issue of "good cause":

8. The undersigned hereby finds that, on October 25, 2022, good cause existed to revoke Defendant's probation, despite the expiration of her probationary period, as required by N.C.G.S. 15A- 1344(f).

9. The "good cause" shown is that on the day of revocation, October 25, 2022, the defendant admitted to committing more than one new criminal offense, and therefore it was within the trial court's discretion to revoke her probation on that day, and in the opinion of the undersigned judge her probation should have been revoked on that day, and this Court so finds.

10. The undersigned specifically finds that such good cause existed because, on October 25, 2022, the Defendant admitted that she had been charged with new criminal offenses while her probationary period was still in effect and had not expired. The defendant admitted to committing more than one new criminal offense, and therefore it was within the authority and discretion of the undersigned to revoke her probation on that day, and her probation should have been revoked on that day.

11. While it may have been appropriate for the Court to extend the defendant's probationary period at the August 1, 2022 session, the imminent expiration was apparently not noticed by the State, the probation officer, the defendant, defendant's attorney, the clerk, or anyone else, and the continuance past the expiration date of the probation was at the defendant's request to be represented by counsel.

12. Court sessions in Cherokee County are few and far between, and this matter was handled expeditiously and professionally by all concerned.

The trial court revoked Defendant's probation, thereby activating the suspended sentences. Defendant again appealed.

## **II. Analysis**

Defendant argues that the trial court erred in finding good cause and revoking her probation.

This Court has recognized that a trial court lacks subject matter jurisdiction to revoke a defendant's probation after the expiration of the probationary term unless it complies with the requirements set forth in N.C. Gen. Stat. § 15A-1344(f), as follows:

- (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). Whether these jurisdictional requirements are satisfied is a question of law reviewed de novo by this Court. *State v. Geter*, 383 N.C. 484, 492, 881 S.E.2d 209, 215 (2022). However, whether there is good cause is a question of fact and is reviewed for an abuse of discretion. *Id.*

We have reviewed the order and conclude that the trial court did not err in revoking Defendant's probation, as explained below.

On 28 April 2022, Defendant's probation officer filed the probation violations with the clerk of court and identified a violation, thus meeting the first two jurisdictional criteria. The trial court did not err in determining that good cause existed in this case for the reasoning below.

Our Supreme Court has held that in reviewing a trial court's evaluation of good cause, the appellate court must defer to "the trial court's intimate view of the circumstances of each case as the fact finder." *Id.* at 492, 881 S.E.2d at 215. In recognizing the trial court's discretion, the Supreme Court further stated:

Considering the vast variety of circumstances which might justify the extension, modification, or revocation of a criminal defendant's probation after the expiration of the defendant's term of probation, N.C. [Gen. Stat.] § 15A-1344(f)(3) does not delineate or describe any of them, but merely prescribes that, in each case, it is up to the trial court to decide whether "good cause" to extend, modify, or revoke a defendant's probation after the expiration of the term of probation has been shown. The trial court's discretion in this matter "must not be exercised absolutely, arbitrarily, or capriciously, but only in accordance with fixed legal principles."

*Id.* at 494, 881 S.E.2d at 216 (quoting *Shankle v. Shankle*, 289 N.C. 473, 483, 223 S.E.2d 380, 386 (1976)).

We have reviewed the trial court's findings and conclude that the trial court did not act arbitrarily or capriciously, nor did it offend substantial justice. We note the finding that Defendant continued to commit similar offenses to those convictions that served as the basis for her probation.

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*Opinion of the Court*

AFFIRMED.

Panel consisting of Chief Judge DILLON, Judges GORE and GRIFFIN.

Report per Rule 30(e).