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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-174

Filed 15 October 2024

Haywood County, Nos. 22CRS50687, 347981

STATE OF NORTH CAROLINA

v.

LAUREN ELIZABETH BERRY, Defendant.

Appeal by defendant from judgment entered 25 August 2023 by Judge Gary M. Gavenus in Haywood County Superior Court. Heard in the Court of Appeals 11 September 2024.

Attorney General Joshua H. Stein, by Assistant Attorney General Michelle Harris, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Heidi Reiner, for defendant-appellant.

FLOOD, Judge.

Defendant Lauren Berry appeals from the trial court's orders revoking Defendant's probation and activating her sentence. On appeal, Defendant solely argues that her trial counsel provided ineffective assistance of counsel ("IAC") by admitting to Defendant's probation violations without Defendant's consent. After careful consideration, we conclude Defendant did not receive IAC, and accordingly

dismiss Defendant's appeal.

I. Factual and Procedural Background

On 16 March 2023, Defendant pled guilty to one count of felony possession of methamphetamine, one count of possession of a schedule II controlled substance, one count of felony possession of a schedule II controlled substance, and two counts of failure to appear. For each count, Defendant was sentenced to a collective term of six to seventeen months' imprisonment, suspended for eighteen months' supervised probation.

On 19 May 2023, Defendant's probation officer filed a probation violation report, alleging Defendant tested positive for methamphetamine and amphetamines on 10 April 2023, was in arrears on court-ordered payment and supervision fees, failed to attend substance abuse assessment, and possessed drug paraphernalia. On 8 August 2023, the trial court entered an order modifying Defendant's terms of probation, requiring her to participate in and complete a twenty-four month Triangle Residential Options for Substance Abusers ("TROSAs") program. On 17 August 2023, the probation officer filed a second violation report, alleging Defendant failed to participate in a TROSA program and committed new crimes, including misdemeanor larceny and possession of stolen goods.

On 25 August 2023, the trial court held a probation revocation hearing based on the probation violation reports. At the hearing, Defendant's counsel admitted that Defendant violated her probation by committing new crimes, but not that she

willfully failed to participate in a TROSA program. Defendant's probation officer testified as to Defendant's charges of possession of methamphetamine, felony possession of another schedule II controlled substance, and the terms of Defendant's suspended sentence and supervised probation. The prosecuting attorney related to the trial court the factual events surrounding the charges for the new crimes committed while Defendant was on probation. Defendant herself admitted to new crimes by admitting that she shoplifted items from Wal-Mart on 16 August 2023, and subsequently pled guilty to the new charge of misdemeanor larceny.

At the close of evidence, the trial court told Defendant that "if [she] would like to say something, now would be the time[.]" but Defendant declined to reply. The trial court found Defendant willfully violated the conditions of her probation, and revoked Defendant's probation and activated her sentence. Defendant timely appealed.

II. Jurisdiction

This Court may review the final judgment of a superior court pursuant to N.C. Gen. Stat. §§ 7A-27(b) and 15A-1347(a) (2023).

III. Analysis

Defendant contends that her case was prejudiced by IAC. Specifically, Defendant argues that, per *Strickland v. Washington*, counsel's admissions made during her probation revocation hearing that Defendant violated her probation by

committing new crimes were without Defendant's consent and prejudiced Defendant. 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). We disagree.

Under *Strickland*, a defendant must satisfy a two-part test to show IAC: "First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as 'counsel' guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense." 466 U.S. at 687, 104 S. Ct. at 2064, 80 L. Ed. 2d at 693; *see also State v. Braswell*, 312 N.C. 553, 562, 324 S.E.2d 241, 248 (1985) ("In order to meet this burden [the] defendant must satisfy a two part test."). To demonstrate prejudice, a defendant must "show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 U.S. at 694, 104 S. Ct. at 2068, 80 L. Ed. 2d at 698. "[T]here is no reason for a court deciding an . . . [IAC] claim to . . . address both components of the inquiry if the defendant makes an insufficient showing on one." *Id.* at 697, 104 S. Ct. at 2069, 80 L. Ed. 2d at 699. "IAC claims brought on direct review will be decided on the merits when the cold record reveals that no further investigation is required, i.e., claims that may be developed and argued without such ancillary procedures as the appointment of investigators or an evidentiary hearing." *State v. Fair*, 354 N.C. 131, 166, 557 S.E.2d 500, 524 (2001) (citation omitted).

In the present case, Defendant contends that she was unfairly prejudiced by counsel's admission that Defendant violated her probation as to the commission of new crimes. Defendant, however, has failed to provide any support for this contention, and the Record demonstrates the State presented competent evidence that Defendant tested positive for methamphetamine while on probation, Defendant's probation officer testified as to Defendant's multiple violations, and Defendant herself admitted to shoplifting. This evidence supports a finding that Defendant violated her probation terms, and therefore, even had counsel not admitted to Defendant's probation violations, the evidence is such that the outcome of the proceeding would not have changed. *See Strickland*, 466 U.S. at 694, 104 S. Ct. at 2068, 80 L. Ed. 2d at 698. Accordingly, Defendant has failed to demonstrate she was prejudiced by counsel's performance per the second part of the *Strickland* test, and has failed to show she received IAC. *See id.* at 694, 697, 104 S. Ct. at 2068–69, 80 L. Ed. 2d at 698–99. Defendant's IAC claim is dismissed. *See Fair*, 354 N.C. at 166, 557 S.E.2d at 524.

IV. Conclusion

Upon review, we find counsel's admission that Defendant committed new crimes did not prejudice the outcome of her case, and as such, conclude Defendant did not receive IAC. We dismiss Defendant's claim of IAC.

DISMISSED.

STATE V. BERRY

Opinion of the Court

Judges CARPENTER and Judge STADING concur.

Report per Rule 30(e).