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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA 24-327

Filed 19 February 2025

Alamance County, Nos. 18 CRS 2270, 18 CRS 2272

STATE OF NORTH CAROLINA

v.

JOSHUA TAHJAI BREWINGTON

Appeal by Defendant from an order entered 3 August 2023 by Judge David T. Lambeth Jr. in Alamance County Superior Court. Heard in the Court of Appeals 14 January 2025.

*Attorney General Jeff Jackson, by Special Deputy Attorney General Robert T. Broughton, for the State.*

*Cooper Strickland for the Defendant.*

WOOD, Judge.

Joshua Tahjai Brewington (“Defendant”) appeals from a final judgment following the revocation of his probation.

**I. Factual and Procedural Background**

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On 4 August 2014 Defendant was indicted for possession with intent to manufacture, sell, or deliver (“PWISD”) 28.4 of marijuana. The indictment did not identify the unit of measurement. On 13 March 2015, Defendant entered a plea agreement to participate in a drug diversion program, which if completed would result in a dismissal and, if not completed, a prayer for judgment continued.

On 22 August 2016, Defendant was indicted for first degree murder. On 27 July 2018, Defendant entered an *Alford* plea to voluntary manslaughter. The plea agreement stated the State would pray for judgment regarding the PWISD charge, resulting in Defendant pleading guilty to that charge as well. The trial court imposed a sentence of six to seventeen months of imprisonment for PWISD and sixty-four to eighty-nine months of imprisonment for the voluntary manslaughter offense, to run consecutively.

The trial court made findings of extraordinary mitigation regarding the voluntary manslaughter offense:

That at the time of incident, the victim was much larger than the defendant and while defendant was walking with the victim behind him, some words were exchanged and the victim struck defendant in the face, and slammed him to the ground, straddled his body on the ground and began striking defendant in the head multiple times. Defendant shot the victim multiple times while the victim was on top of him. Defendant was provoked by the victim at the time of the shooting and as a result of the blows to his head, Defendant suffered memory loss. Defendant gave notice to the state of Self Defense.

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Based on these findings, the trial court suspended both sentences for sixty months of special probation under N.C. Gen. Stat. § 15A-1351, including a twenty-two-month active sentence which was subject to twenty-two months of jail credit.

On 18 October 2018, violation reports were filed by Officer Whitney Mitchell (“Officer Mitchell”) alleging various violations including a positive drug test for marijuana, failing to report for a court ordered Treatment Accountability for Safer Communities (“TASC”) assessment, and various financial arrearages totaling \$520.00. On 15 November 2018, the trial court modified Defendant’s probation and ordered “[i]f defendant fails to obtain TASC assessment, tests positive for any illegal drugs, or refuses to submit to drug screening, he is to be arrested and placed under a \$50,000.00 secured bond.”

On 29 November 2018, Officer Mitchell filed violation reports alleging technical probation violations and two new criminal offenses. The report states that on or about 29 November 2018 Defendant committed the new offenses of resisting/delaying/obstructing a public officer in the discharge of duties in Lee County and possession of a firearm by a convicted felon in Lee County. In addition, the report states he failed to give his probation officer notice that he intended to live outside the county.

On 14 March 2019, Defendant’s probation was modified to impose a 90-day period of confinement. At that time Defendant admitted to willful violation of probation for failing to provide his probation officer with an address when he intended

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to live outside of Alamance County. It was noted on the Modification of Probation order “all other violations [would be] dismissed” due to the federal indictments for the same offenses.

On 8 August 2019, the State dismissed charges of resisting a public officer and felon in possession of a firearm without leave to refile because Defendant had been “indicted by [the] US Attorney’s Office for these charges.” On 28 October 2019, Defendant was sentenced in federal court to an active term of sixty-four months of imprisonment for the federal charges to run consecutively to any related state court sentence.

On 4 March 2021, probation violation reports alleging a revocable offense of felon in possession of a firearm occurring on 28 October 2019 were signed by a different probation and parole officer, Officer David Powell (“Officer Powell”), but these reports were not filed until 29 March 2023, two years after they were originally signed.

On 3 August 2023, the trial court held a hearing on the probation violations. Defendant admitted the probation violations. At the hearing, the State conceded that Defendant was “no longer on probation, and he had been out of our system for a while since he’s been in federal prison.” During testimony Officer Powell testified,

A violation was actually done by Officer Mitchell back in March of 2021. The reason it wasn’t served till this year, until [Defendant] was released from federal halfway house in June, was because feds would not allow us to serve the warrants. So I inherited the case from Mr. Mitchell which,

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in turn, when he was released, I picked him up and served him with the warrants for the violation.

Officer Powell's testimony is inconsistent with record evidence which tends to show that Officer Mitchell signed the original violation reports in 2018 for charges that the State dismissed without leave to refile because Defendant had pending federal charges for the same offenses. The record demonstrates that Officer Powell signed the probation violation reports at issue in 2021 while Defendant was incarcerated in federal prison but did not file the reports until Defendant was released from federal prison. No other record evidence supports the assertion that the "feds would not allow [the state] to serve the warrants."

During the probation revocation hearing, Defendant requested that his probation be terminated because, if his charges had run concurrently, his sentence would be complete with over seventy months served between his fifty-four months in federal prison and twenty-four months credit from the state. Defendant also noted that he completed his time in a halfway house and was now employed, living with his mother and providing support to his children.

The trial court requested clarification from the probation officer concerning Defendant's charges and underlying sentences. In response, Officer Powell stated, "the underlying on the manslaughter, Your Honor, was 64 to 89, and the underlying on the marijuana charge was 6 to 17." Officer Powell went on to state "I'm willing just to leave this in the discretion of the Court how they want to handle it since it's -

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- he's no longer on probation, and he has been out of our system for a while since he's been in federal prison.”

At the end of the hearing the trial court stated

Yeah. I just -- I mean, it -- I mean, it sends a really bad message if I just do like this (motions with hands). That's all I'm doing. For somebody who's on probation for killing somebody, selling dope, ruining our community, poisoning our community, and then he gets federal firearm offenses and I'm just going to say, well, it's okay. I'm not doing it. I'm just not. His sentence is activated. I'll run them concurrently. I'll give him that break. He's served 24 of the months already. [Defendant], I'm just -- that is not something that I am willing to do. It's just not. It would be a mockery of the entire system.

The trial court did not make any findings of good cause to hear the probation violation after Defendant's probation had expired even though the State had conceded the expiration in court. The trial court entered orders revoking Defendant's probation on 3 August 2023. Defendant filed written notice of appeal on 11 August 2023.

## **II. Analysis**

Defendant argues the trial court erred by revoking probation after the expiration of the probationary period pursuant to N.C. Gen. Stat. §15A-1344(f)(1) and (3). Additionally, Defendant argues the trial court erred by violating its statutory mandate to consider termination of Defendant's probation pursuant to N.C. Gen. Stat. §15A-1342(b) and (d).

### **A. Revoking probation after the expiration of the probationary period**

Our Supreme Court has consistently held that “[w]hether a trial court has the

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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). Further, "[w]e review issues relating to subject matter jurisdiction *de novo*." *Id.* N.C. Gen. Stat. §15A-1344(f) sets three jurisdictional requirements that must be met: (1) whether a probation violation report was filed prior to the expiration of the defendant's probation; (2) whether the trial court found that the defendant violated one or more conditions of his or her probation; and (3) whether the trial court found good cause "that the probation should be extended, modified, or revoked." N.C. Gen. Stat. §15A-1344(f) (2023). Defendant argues the trial court did not meet the first and third requirements.

The first requirement is that the probation violation report must be filed prior to the expiration of the defendant's probation. Defendant contends that the probation violation report was filed after the expiration of Defendant's probation. We disagree.

"[A] period of probation commences on the day it is imposed and runs concurrently with any other period of probation, parole, or imprisonment to which the defendant is subject during that period." *State v. Patterson*, 190 N.C. App. 193, 195, 660 S.E.2d 155, 157 (2008) (cleaned up); N.C. Gen. Stat. §15A-1346 (2023). In the current case, Defendant entered an *Alford* plea to voluntary manslaughter on 27 July 2018 and the trial court imposed a sentence of 60 months of probation. Therefore, his period of probation ran until 27 July 2023. The probation violation reports at issue were filed on 29 March 2023, prior to the expiration of the defendant's probation. Defendant's

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contention as to the first requirement in section one of N.C. Gen. Stat. §15A-1344(f) fails.

The third requirement is that the trial court must make a finding of “good cause” that probation should be extended, modified or revoked. N.C. Gen. Stat. §15A-1344(f). Defendant contends, and the State concedes, that the trial court failed to make any specific finding of good cause, either in open court or in writing.

Our Supreme Court has specifically stated “trial courts are then required by subsection (f)(3) to make an *additional* finding of ‘good cause shown and stated’ to justify the revocation of probation even though the defendant’s probationary term has expired.” *State v. Morgan*, 372 N.C. 609, 617, 831 S.E.2d 254, 259 (2019) (quoting N.C. Gen. Stat. § 15A-1344(f)(2)).

The Supreme Court further clarified the issue in *State v. Geter* stating “a trial court’s jurisdiction to revoke a defendant’s probation after the expiration of that defendant’s probationary term is established *if* all the [factors from N.C. Gen. Stat. § 15A-1344(f)(1)–(3) (2021)] apply.” *State v. Geter*, 383 N.C. 484, 489, 881 S.E.2d 209, 213 (2022) (emphasis added). Further they held “that the good cause found by the trial court must be ‘stated’ on the record, either in open court by the trial court, by a party with the trial court’s endorsement, or within the trial court record.” *Id.* at 491, 881 S.E.2d at 214. Additionally, “[w]hat constitutes ‘good cause shown and stated’ is a case-by-case, fact-specific determination which requires a trial court to consider the particular circumstances which mandate that good cause be shown.” *Id.* at 493, 881

S.E.2d at 215.

Here, there is no evidence, either oral or written, that the trial court made any findings of “good cause” regarding the adjudication of a probation violation after the termination of probation notwithstanding the State’s acknowledgment of the termination of Defendant’s probation prior to the hearing. “In the absence of statutorily mandated factual findings, the trial court’s jurisdiction to revoke probation after expiration of the probationary period is not preserved.” *Id.* at 489, 881 S.E.2d at 213. However, based on a review of the record we are unable to say that no evidence exists that would allow the trial court to make a finding of “good cause shown and stated” on remand. We therefore remand this matter to the trial court for findings on whether good cause exists from which the trial court would then possess jurisdiction to revoke Defendant’s probation after the expiration of his probationary period.

**B. Statutory mandate under N.C. Gen. Stat. §15A-1342(b) and (d)**

We need not address Defendant’s remaining contention because this case must be remanded for findings regarding good cause for the adjudication of the probation violation after the termination of probation.

**III. Conclusion**

Although the probation violation report was filed during Defendant’s period of probation, the hearing on the probation violation occurred after the probation period and the trial court failed to make statutorily required factual findings regarding

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“good cause shown and stated” to revoke Defendant’s probation after the expiration of his probationary period. Therefore, we vacate and remand to the trial court for the sole purpose of making findings as to whether good cause exists to revoke Defendant’s probation after the expiration of his probationary period.

VACATED AND REMANDED.

CHIEF JUDGE DILLON and JUDGE MURRY concur.

Report per Rule 30(e).