

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-1010

Filed 16 September 2026

Durham County, No. 24CR000076-310

STATE OF NORTH CAROLINA

v.

TIA ALLEN, Defendant.

Appeal by Defendant from order entered 26 March 2024 by Judge L. Lamont Wiggins in Durham County Superior Court. Heard in the Court of Appeals 26 February 2025.

Attorney General Jeff Jackson, by Assistant Attorney General Kristin Cook McCrary, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Kathryn L. VandenBerg, for the defendant-appellant.

STADING, Judge.

Tia M. Allen (“Defendant”) appeals from an order modifying her probation. After careful consideration, we affirm the trial court’s order but vacate certain provisions contained therein not supported by the record.

I. Background

Defendant entered into a plea agreement on 18 April 2022, whereby she pled guilty to habitual larceny, felony fleeing to elude arrest, larceny from a merchant,

STATE V. ALLEN

Opinion of the Court

felony larceny, carrying a concealed weapon, and contributing to the delinquency of a juvenile. Pursuant to that agreement, the State dismissed multiple other felony and misdemeanor charges. The sentencing court determined Defendant was a prior record level IV for felony sentencing purposes. Therefore, the sentencing court entered a consolidated judgment of imprisonment for a minimum term of 11 months and maximum term of 23 months. That sentence was suspended for 24 months of supervised probation. The probation period was to commence upon Defendant's release from incarceration for another case. The sentencing court also ordered Defendant to pay a total of \$6,345.07 as a monetary condition: \$5,694.57 in restitution; \$575.50 in court costs; and \$75.00 in other fees. And as a special condition of probation imposed under N.C. Gen. Stat. § 15A-1343(b1), Defendant was banned from all Target stores, ordered to complete SAFEchild and have no contact with the co-defendants involved with her case.

On 6 February 2024, Defendant's probation officer filed two violation reports. The violation reports alleged Defendant had willfully violated her probation by failing to make any payments towards restitution, court costs, and other fees owed. Among other things, the violation reports alleged that Defendant failed to report to her probation officer as directed and was charged with several new criminal offenses, including: (1) habitual larceny; (2) obtaining property by false pretenses; and (3) possession of a stolen motor vehicle. Following a preliminary hearing on 12 February

STATE V. ALLEN

Opinion of the Court

2024, the trial court entered an order finding probable cause to support the violation reports and ordered the matter to be scheduled for a hearing.

At Defendant's hearing on 26 March 2024, after the State read aloud the alleged violations, the Court inquired of Defendant:

[THE COURT]: Does your client admit to the willful violations of probation?

[DEFENDANT'S ATTORNEY]: She admits to the new charges that do exist, not to the --

THE COURT: Commission thereof. I understand.

[DEFENDANT'S ATTORNEY]: But she does admit to, again, failing to pay any money. She has [been] in custody for a considerable amount of time, even prior to this. She has been in since July 2023, in regards to the money. And she did receive (indiscernible).

There was no inquiry about the allegation that Defendant failed to report to her probation officer. The trial court then engaged in a colloquy with Defendant's probation officer, who recommended extending Defendant's probation for another twelve months. In response, Defendant's attorney requested that the trial court terminate Defendant's probation.

Thereafter, the trial court announced it would "extend the period of supervision for an additional period of 24 months," and ordered Defendant "to serve a period of special probation of five months[] custody [in] the North Carolina Division of Adult Correction." The trial court added, upon her release from incarceration, Defendant "is to report for continued supervision within 72 hours of her release from

confinement,” and “is to be subject to electronic house arrest for a minimum period of six months. . . .” In its written order, the trial court found Defendant had violated all of the allegations set forth in the violation reports and modified probation as stated in court.

On 4 April 2024, Defendant entered her notice of appeal. Defendant also filed a motion for appropriate relief (“MAR”) with our Court on 12 December 2024.

II. Analysis

Defendant first argues the trial court abused its discretion by determining she committed several willful probation violations because it failed to make sufficient findings and the State presented insufficient evidence. Defendant also maintains the trial court erred by imposing a special condition of probation under N.C. Gen. Stat. § 15A-1351(a) (2025).

A. Probation Violations

Defendant contends the trial court abused its discretion in determining she willfully violated the terms of her probation. Specifically, she maintains the State presented insufficient evidence that she committed the new criminal offenses and that she failed to report to her probation officer. Defendant further asserts the trial court abused its discretion in determining she willfully failed to pay restitution, court costs, and other fees since it made no findings considering her inability to pay.

“[T]he alleged violation of a valid condition of probation need not be proven beyond a reasonable doubt.” *State v. Murchison*, 367 N.C. 461, 464, 758 S.E.2d 356,

358 (2014) (quoting *State v. Duncan*, 270 N.C. 241, 245, 154 S.E.2d 53, 57 (1967)). Instead, the evidence must “reasonably satisfy the judge in the exercise of his sound discretion that the defendant has willfully violated a valid condition of probation.” *Murchison*, 367 N.C. at 464, 758 S.E.2d at 358 (quoting *State v. Hewett*, 270 N.C. 348, 353, 154 S.E.2d 476, 480 (1967)). “The judge’s finding of such a violation, if supported by competent evidence, will not be overturned absent a showing of manifest abuse of discretion.” *State v. Young*, 190 N.C. App. 458, 459, 660 S.E.2d 574, 576 (2008) (citation omitted). “An abuse of discretion occurs where the trial judge’s determination is manifestly unsupported by reason and is so arbitrary that it could not have been the result of a reasoned decision.” *State v. Reed*, 355 N.C. 150, 155, 558 S.E.2d 167, 171 (2002) (citations and quotation marks omitted).

N.C. Gen. Stat. § 15A-1343(b) (2025) provides a list of the regular conditions of probation, including:

(b) Regular Conditions. – As regular conditions of probation, a defendant must:

(1) Commit no criminal offense in any jurisdiction.

....

(3) Report as directed by the court or his probation officer to the officer at reasonable times and places and in a reasonable manner, permit the officer to visit him at reasonable times, answer all reasonable inquiries by the officer and obtain prior approval from the officer for, and notify the officer of, any change in address or employment.

....

(9) Pay the costs of court, any fine ordered by the court, and make restitution or reparation

“[T]he burden of proof is upon the State to show that the defendant has violated one of the conditions of his probation.” *State v. Seagraves*, 266 N.C. 112, 113, 145 S.E.2d 327, 329 (1965). “There must be substantial evidence of sufficient probative force to generate in the minds of reasonable men the conclusion that defendant has in fact breached the condition in question.” *State v. Millner*, 240 N.C. 602, 605, 83 S.E.2d 546, 548 (1954). However, “when a defendant admits to willfully violating a condition of his or her probation in court, the State does not need to present evidence to support the violations.” *State v. Brown*, 279 N.C. App. 630, 633–34, 865 S.E.2d 753, 756 (2021).

We first address Defendant’s contention that the trial court abused its discretion by determining she failed to pay restitution, court costs, and other fees because it did not consider her inability to pay. Defendant maintains that since she offered evidence of her inability to pay at the hearing, the trial court should have made findings of fact demonstrating it considered and evaluated the evidence. We disagree.

“In a probation revocation proceeding based upon defendant’s failure to pay a fine or restitution which was a condition of his probation the burden is upon the defendant to ‘offer evidence of his inability to pay money according to the terms of the [probationary] judgment.’” *State v. Jones*, 78 N.C. App. 507, 509, 337 S.E.2d 195, 197 (1985) (alteration in original and citation omitted). If a defendant offers no evidence as to their inability to pay, “then the evidence which establishes that [the]

defendant has failed to make payments as required by the terms of the judgment is sufficient within itself to justify a finding by the judge that [the] defendant's failure to comply was without lawful excuse." *State v. Floyd*, 213 N.C. App. 611, 615, 714 S.E.2d 447, 450 (2011) (alterations in original and citation omitted). However, where a "defendant does put on evidence of his inability to pay, . . . he is entitled to have his evidence considered and evaluated by the trial court, and the trial court must make findings of fact which clearly show that [it] did consider and did evaluate the defendant's evidence." *Id.* (citation omitted).

Here, Defendant did not deny this probation violation. Instead, when the trial court asked whether Defendant wanted to admit any of the alleged probation violations, Defendant admitted her failure to make any payments towards restitution, court costs, and other fees owed. *See Brown*, 279 N.C. App. at 633–34, 865 S.E.2d at 756 ("[W]hen a defendant admits to willfully violating a condition of his or her probation in court, the State does not need to present evidence to support the violations."). Following this admission, Defendant's counsel stated: "She has [been] in custody for a considerable amount of time, even prior to this. She has been in since July 2023, in regard[] to the money." However, our Court has previously determined that the statements of counsel do not qualify as competent evidence with respect to an inability to comply with the terms of probation. *See State v. Crouch*, 74 N.C. App. 565, 567, 328 S.E.2d 833, 835 (1985) ("We hold that counsel's statements were not competent evidence, and that the trial court was not, therefore, under a duty to make

specific findings with respect to defendant’s alleged inability to comply.”). Thus, these statements by Defendant’s counsel do not qualify as evidence of her inability to pay. *See Basmaz v. Wells Fargo Bank Nat’l Ass’n*, 236 N.C. App. 508, 513, 763 S.E.2d 536, 539 (2014) (citation and quotation marks omitted) (“It is axiomatic that the arguments of counsel are not evidence.”).

Defendant further argues since “her probation officer acknowledged at the hearing that [she] could not pay while incarcerated,” the trial court was required to consider and evaluate the evidence. Yet, upon reviewing the record, we are unable to discern any statement to this effect by the probation officer. Indeed, when the trial court asked for a recommendation, Defendant’s probation officer stated:

Yes, Your Honor. At this time it would just be, with the pending charges, it would just be for a 12-month extension, but at this time she is currently in custody with DAC. I’m not quite sure how long, so I don’t know how to go about extending her probation case seeing that she has restitution of monies to be paid.

Although Defendant’s probation officer acknowledged that Defendant still owed restitution, the probation officer’s statement did not note that Defendant was unable to pay.

For the foregoing reasons, the trial court did not abuse its discretion in determining Defendant willfully violated a term of her probation. We therefore affirm the trial court’s order finding that “the defendant admitted . . . the defendant violated the condition(s) of probation set forth in . . . b. Paragraph(s) 1–2 in the

Violation Report or Notice of Hearing dated 02/06/2024.” And since Defendant willfully admitted to violating “a condition of probation,” the trial court was permitted to “modify the probation” under N.C. Gen. Stat. § 15A-1344(e) (2025). Thus, though the record does not support the trial court’s order finding Defendant committed new offenses or failed to report as directed, the order is nevertheless affirmed. We vacate the portion of the trial court’s order finding “the defendant admitted . . . the defendant violated the condition(s) of probation set forth in . . . a. Paragraph(s) 1–2 in the Violation Report or Notice of Hearing dated 02/06/2024.” Similarly, we vacate the trial court’s finding “the defendant admitted . . . the defendant violated the condition(s) of probation set forth in . . . b. Paragraph(s) 3 in the Violation Report or Notice of Hearing dated 02/06/2024.”

B. Motion for Appropriate Relief

In her MAR, Defendant asserts the trial court erred by imposing a five-month active sentence as a special condition of probation. Specifically, Defendant maintains “the special term of probation is illegal under N.C. Gen. Stat. § 15A-1351(a), which provides that ‘no confinement other than an activated suspended sentence may be required beyond two years of conviction.’” For support, Defendant cites *State v. Jackson*, 291 N.C. App. 116, 894 S.E.2d 263 (2023). For the following reasons, we deny Defendant’s MAR.

As a preliminary matter, we note that Defendant did not raise this argument on direct appeal. Instead, Defendant submitted an MAR with our Court on 12

December 2024 pursuant to N.C. Gen. Stat. §§ 15A-1415(b)(8), -1418(a). A defendant may raise an MAR “in the appellate division when the case is pending in the appellate division.” *State v. Sandy*, 248 N.C. App. 92, 97, 788 S.E.2d 200, 205 (2016) (emphasis omitted). Indeed, “[o]ur Court has the statutory authority to dispose of a[n] MAR filed in our Court during an appeal if the taking of additional evidence is not necessary.” *Sandy*, 248 N.C. App. at 97, 788 S.E.2d at 205 (emphasis omitted). However, “if the taking of additional evidence is necessary, it is the appellate court’s duty to remand the MAR to the trial division for the taking of additional evidence.” *Id.*

In this case, the record is sufficient for us to decide Defendant’s MAR on direct appeal as it concerns whether the special condition of probation runs afoul of our statutory mandate. *See Jones*, 296 N.C. at 78, 248 S.E.2d at 860; *see also* N.C. Gen. Stat. § 15A-1418(b). “Although a challenge to a trial court’s decision to impose a condition of probation is generally reviewed on appeal for abuse of discretion, an alleged error in statutory interpretation is an error of law, which we review de novo.” *Jackson*, 291 N.C. App. at 120, 894 S.E.2d at 266. “‘Under a *de novo* review, the court considers the matter anew and freely substitutes its own judgment’ for that of the lower tribunal.” *State v. Williams*, 362 N.C. 628, 632–33, 669 S.E.2d 290, 294 (2008) (citation omitted).

“When a defendant has violated a condition of probation, the court may modify the probation to place the defendant on special probation as provided in this

subsection.” N.C. Gen. Stat. § 15A-1344(e); *see also id.* § 15A-1344(d) (“If a probationer violates a condition of probation at any time prior to the expiration or termination of the period of probation, the court, in accordance with the provisions of G.S. 15A-1345, may . . . place the defendant on special probation as provided in subsection (e) . . .”). “In placing the defendant on special probation, the court may continue or modify the conditions of probation and in addition require that the defendant submit to a period or periods of imprisonment, either continuous or noncontinuous, at whatever time or intervals within the period of probation the court determines.” N.C. Gen. Stat. § 15A-1344(e). “Except for probationary sentences for impaired driving under G.S. 20-138.1, the total of all periods of confinement imposed *as an incident of special probation*, but not including an activated suspended sentence, *may not exceed* one-fourth the maximum sentence of imprisonment imposed for the offense.” *Id.* (emphasis added). In addition, “[n]o confinement other than an activated suspended sentence may be required beyond the period of probation or beyond two years of the time the special probation is imposed, whichever comes first.” *Id.*

Here, on 18 April 2022, the trial court sentenced Defendant to 11–23 months of imprisonment, suspended for 24 months of supervised probation. Accordingly, Defendant’s period of probation was set to expire on 18 April 2024. However, on 26 March 2024—before Defendant’s probation expired—the trial court extended it for another 24 months and imposed a five-month active sentence as a special condition

pursuant to N.C. Gen. Stat. § 15A-1344(d). Since Defendant admitted to willfully violating the condition of her probation requiring that she make payments to restitution, court costs, and other fees owed, the trial court was authorized to impose special probation under N.C. Gen. Stat. § 15A-1344(e) (“Special Probation in Response to Violation.”). *See Brown*, 279 N.C. App. at 633–34, 865 S.E.2d at 756. This includes the authority to “require that the defendant submit to a period or periods of imprisonment, either continuous or noncontinuous, at whatever time or intervals within the period of probation the court determines.” N.C. Gen. Stat. § 15A-1344(e).

The trial court’s imposition of a five-month sentence complies with N.C. Gen. Stat. § 15A-1344(e) since it does “not exceed one-fourth the maximum sentence of imprisonment imposed for the offense”—in this case, 23 months. *Id.* It also complies with N.C. Gen. Stat. § 15A-1344(e) since it does not reach “beyond the period of probation or beyond two years of the time the special probation is imposed, whichever comes first.” *Id.* Indeed, Defendant’s current period of imprisonment is set to expire on 28 January 2025, and her probation is set to expire on 18 April 2026. Thus, Defendant’s five-month sentence will be served less than a year after its imposition—which is neither beyond the period of probation nor beyond two years from the time the special probation was imposed. *Id.* Accordingly, Defendant’s five-month term of imprisonment, as a special condition of probation, complies with N.C. Gen. Stat. § 15A-1344(e).

On the other hand, N.C. Gen. Stat. § 15A-1351(a), the statute Defendant relies upon, “allows a trial court to order a defendant to submit to a period or periods of imprisonment in a local confinement facility or in the custody of the Department of Correction as a condition of special probation,” but no such “confinement other than an activated suspended sentence may be required beyond two years of conviction.” *State v. Hearst*, 356 N.C. 132, 135, 567 S.E.2d 124, 127 (2002); N.C. Gen. Stat. § 15A-1351 (“Sentence of imprisonment; incidents; special probation.”). That statute provides:

§ 15A-1351. Sentence of imprisonment; incidents; special probation.

(a) *The judge may sentence to special probation a defendant convicted of a criminal offense other than impaired driving under G.S. 20-138.1, if based on the defendant’s prior record or conviction level as found pursuant to Article 81B of this Chapter, an intermediate punishment is authorized for the class of offense of which the defendant has been convicted.*

....

Except for probationary sentences of impaired driving under G.S. 20-138.1, the total of all periods of confinement imposed as an incident of special probation, but not including an activated suspended sentence, may not exceed one-fourth the maximum sentence of imprisonment imposed for the offense, and no confinement other than an activated suspended sentence may be required beyond two years of conviction.

....

In imposing a sentence of special probation, the judge may credit any time spent committed or confined, as a result of

the charge, to either the suspended sentence or to the imprisonment required for special probation. The original period of probation, including the period of imprisonment required for special probation, shall be as specified in G.S. 15A-1343.2(d), but may not exceed a maximum of five years, except as provided by G.S. 15A-1342(a). *The court may revoke, modify, or terminate special probation as otherwise provided for probationary sentences.*

N.C. Gen. Stat. § 15A-1351(a) (emphasis added).

Contrary to Defendant's contention, a close reading reveals that N.C. Gen. Stat. § 15A-1351 allows a trial court to impose special probation *at the time of sentencing*, whereas N.C. Gen. Stat. § 15A-1344 allows a trial court to impose special probation *in response to a probationer's violation* of a condition of probation. *Contrast id.* § 15A-1351(a) ("The judge may sentence to special probation a defendant convicted of a criminal offense . . . if based on the defendant's prior record level . . . an intermediate punishment is authorized for the class of offense of which the defendant has been convicted."), *with id.* § 15A-1344(d) ("If a probationer violates a condition of probation at any time prior to the expiration or termination of the period of probation, the court, in accordance with the provisions of G.S. 15A-1345, . . . may place the defendant on special probation as provided in subsection (e) . . ."). Thus, in a case such as this, N.C. Gen. Stat. § 15A-1344 controls.

Nevertheless, Defendant relies on *Jackson*, 291 N.C. App. 116, 894 S.E.2d 263, to assert the trial court's imposition of a five-month active sentence violates N.C. Gen. Stat. § 15A-1351 since it will commence "beyond two years" from when she was

originally convicted. In *Jackson*, the trial court extended the defendant's probation by 12 months and ordered him "to serve a 45-day active term as a condition of special probation" after it determined he willfully violated the conditions of his probation. 291 N.C. App. at 117, 894 S.E.2d at 265. On appeal, the defendant first argued "that the trial court erred by extending his probation after his probationary term had expired absent a specific finding of good cause." *Id.* at 116, 894 S.E.2d at 265. This Court examined N.C. Gen. Stat. § 15A-1344(f) and held that the trial court failed to make the statutorily required good cause determination—thus that portion of the order was vacated and remanded. *Jackson*, 291 N.C. App. at 119, 894 S.E.2d at 266.

The *Jackson* defendant also argued that "the trial court erred by ordering him to serve an active term of 45 days as a condition of special probation because . . . 'it results in imprisonment two years past conviction[.]'" *Id.* at 119–20, 894 S.E.2d at 266. When reviewing the defendant's contention, the *Jackson* Court relied upon N.C. Gen. Stat. § 15A-1351(a). *Id.* at 120, 894 S.E.2d at 267 (citing N.C. Gen. Stat. § 15A-1351(a)). Pursuant to subsection 15A-1351(a), the panel ultimately concluded the trial court erred by imposing a 45-day active term as a condition of special probation since it was "more than two years after his conviction." *Jackson*, 291 N.C. App. at 121, 894 S.E.2d at 267.

Although both the present matter and *Jackson* both concern the imposition of special probation—we are not bound by the decision of the *Jackson* panel in resolving Defendant's asserted issue. *Jackson's* reliance on N.C. Gen. Stat. § 15A-1344 begins

and ends with the analysis under subsection 15A-1344(f), in the present context, the appropriate statute is N.C. Gen. Stat. § 1344(e). The Court's only mention of N.C. Gen. Stat. § 15A-1344(e) is the truncated beginning of the subsection which was: "When a defendant has violated a condition of probation, the court may modify the probation to place the defendant on special probation[.]" *Jackson*, 291 N.C. App. at 120, 894 S.E.2d at 266 (brackets in original). Importantly, the full statutory sentence reads: "When a defendant has violated a condition of probation, the court may modify the probation to place the defendant on special probation *as provided in this subsection*." N.C. Gen. Stat. § 15A-1344(e) (emphasis added).

Additionally, the *Jackson* decision notes reliance on *State v. Ray*, 274 N.C. App. 240, 851 S.E.2d 653 (2020) for guidance on the application of subsection 15A-1351(a). However, *Ray* is distinguishable from *Jackson* as well as the present matter. In *Ray*, the defendant appealed after a jury convicted him of insurance fraud and obtaining property by false pretenses, for which the defendant was sentenced "to 10 to 21 months of imprisonment, suspended for 24 months of supervised probation." *Id.* at 242, 851 S.E.2d at 655. The trial court also ordered the defendant "to serve a 60-day active term" as a special condition of probation. *Id.* On appeal, the defendant contended the 60-day active term amounted to statutory error since N.C. Gen. Stat. § 15A-1351(a) mandates that "no portion of this imprisonment 'may be required beyond two years of conviction.'" *Id.* at 247, 851 S.E.2d at 658 (quoting N.C. Gen. Stat. § 15A-1351(a)). The defendant maintained "that the trial court improperly

delegated its authority to [the] [d]efendant's probation officer by failing to set a completion deadline for the active term of [the] [d]efendant's split sentence." *Ray*, 274 N.C. App. at 246, 851 S.E.2d at 658. Our Court observed that N.C. Gen. Stat. § 15A-1351(a) allows a trial court to "sentence a defendant to special probation as a form of intermediate punishment, under certain circumstances." *Id.* Relying on N.C. Gen. Stat. § 15A-1351(a), the Court ultimately concluded the trial court did not commit error since the 60-day active term would be completed by "the end of the two-year probationary period and *two years from the date of conviction.*" *Id.* (emphasis added).

Defendant argues *Jackson* is dispositive on this issue. Our interpretation of N.C. Gen. Stat. § 15A-1351 is that it applies at the time of original sentencing, whereas N.C. Gen. Stat. § 15A-1344 applies when a defendant violates a condition of their probation. *See State v. Rankin*, 371 N.C. 885, 889, 821 S.E.2d 787, 792 (2018) (citation omitted) ("The intent of the General Assembly may be found first from the plain language of the statute . . ."). That said, the plain language of subsection 15A-1344(e) requires application pursuant to itself and not another subsection under Article 82. *See* N.C. Gen. Stat. § 15A-1344(e) ("When a defendant has violated a condition of probation, the court may modify the probation to place the defendant on special probation *as provided in this subsection.*"). To the extent *Jackson* or *Ray* invokes the application of N.C. Gen. Stat. § 15-1351, under these facts, they are inapplicable as the plain language of the statute must control. *See State v. Carey*,

373 N.C. 445, 450, 838 S.E.2d 367, 372 (2020) (cleaned up) (“According to well-established North Carolina law, when the language of a statute is clear and unambiguous, there is no room for judicial construction and the courts must give the statute its plain and definite meaning.”). Certainly, a defendant cannot be permitted to fail to comply with conditions of probation at the end of the term initially imposed and then avoid those special conditions set out in Article 82. For this reason, we are compelled to follow the relevant statute. Defendant’s arguments fail since the special probation condition applied complies with N.C. Gen. Stat. § 15A-1344(e). *See Carey*, 373 N.C. at 450, 838 S.E.2d at 372.

III. Conclusion

We hold the trial court did not abuse its discretion by concluding that Defendant willfully violated her probation after she admitted to failing to make payments towards restitution, courts costs, and other fees owed. However, we vacate the findings of other violations as noted herein. Additionally, we hold the special condition of probation complied with N.C. Gen. Stat. § 15A-1344. It was therefore proper and we deny Defendant’s MAR. Accordingly, we affirm the trial court’s order.

AFFIRMED; VACATED IN PART.

Judges ARROWOOD and CARPENTER concur.