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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA25-755

Filed 4 November 2026

New Hanover County, No. 21CR057550-640

STATE OF NORTH CAROLINA

v.

KENNETH MATTHEW JOHNSON, Defendant.

Appeal by Defendant from judgment entered 13 January 2025 by Judge G. Frank Jones in New Hanover County Superior Court. Heard in the Court of Appeals 25 February 2026.

Attorney General Jeff Jackson, by Assistant Attorney General Victor Unnone III, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Candace Washington, for Defendant-Appellant.

CARPENTER, Judge.

Kenneth Johnson ("Defendant") appeals the trial court's order revoking his probation and activating his suspended sentence. On appeal, he argues that the trial court did not identify a good cause basis for revoking his probation after the probationary period expired or, in the alternative, that the trial court abused its

discretion. Recognizing that his notice of appeal did not comply with Rule 4, Defendant filed a petition for writ of certiorari ("PWC"). In our discretion, we deny Defendant's PWC and dismiss his appeal.

I. Factual & Procedural Background

In October 2022, Defendant pleaded guilty to habitual larceny and was sentenced to a term of eleven to twenty-three months of imprisonment, suspended for twelve months of supervised probation. In September 2023, a New Hanover County magistrate entered an order for Defendant's arrest for felony probation violation. On 13 January 2025, the trial court held a probation violation hearing, and the evidence tended to show the following.

Defendant's probation for his felony larceny conviction was scheduled to end on 3 October 2023. His probation conditions required him to notify his probation officer of any change of address, report to his probation officer, refrain from using illegal substances, and to not abscond. On 6 September 2023, Defendant's probation officer, Officer Morrisey, filed two probation violation reports. In the reports, Officer Morrisey alleged that Defendant: "admitted to using cocaine" and drinking alcohol; was discharged from a residential recovery program for substance abuse; failed to appear for two probation appointments; failed to notify Officer Morrisey of an address change; and committed traffic violations.

On 28 September 2023, Officer Morrisey filed another violation report, alleging that Defendant absconded. On 31 August 2023, Officer Morrisey and another officer

went to the residential recovery program where Defendant had been living but could not locate him. Defendant had been discharged for testing positive for cocaine. Officer Morrisey could not contact Defendant until after his arrest. When Officer Morrisey asked Defendant where he had been, Defendant responded, "I been around."

At the probation violation hearing, Defendant testified that, although he did not know the specific date, he believed that his probation had already expired by the time he allegedly absconded. At the conclusion of the hearing, the trial court stated, "Upon a review of the record, evidence adduced, and arguments of counsel, in the exercise of discretion, the Court is reasonably satisfied that [D]efendant willfully violated the terms and conditions as set forth in the violation report . . . filed September 6, 2023." The trial court further stated that it was "reasonably satisfied" based on the evidence that Defendant willfully violated the conditions of his probation requiring Defendant to obtain prior approval and notify his probation officer of any change in address, and to not abscond.

The trial court found that Officer Morrisey filed the violation reports before Defendant's probation expired. The trial court also found that "good cause ha[d] been shown and stated for the conduct of the hearing after the termination of the period of probation." The trial court revoked Defendant's probation and activated the suspended sentence of eleven to twenty-three months of imprisonment. On 29 January 2025, sixteen days after entry of the probation revocation judgment, Defendant filed written notice of appeal.

II. Jurisdiction

Defendant concedes his notice of appeal was untimely. Consequently, he petitions this Court to issue writ of certiorari and argues that the trial court did not make the required finding for good cause to revoke his probation after its expiration.

Under Rule 4, a criminal defendant may appeal a judgment within fourteen days. N.C. R. App. P. 4(a)(2) (2025). "[F]ailure to comply with Rule 4[] 'precludes the appellate court from acting in any manner other than to dismiss the appeal.' " *State v. Hammonds*, 218 N.C. App. 158, 162, 720 S.E.2d 820, 823 (2012) (quoting *Dogwood Dev. & Mgmt. Co. v. White Oak Transp. Co.*, 362 N.C. 191, 197, 657 S.E.2d 361, 365 (2008)).

Nonetheless, this Court may exercise its "discretion to consider the matter by granting a petition for writ of certiorari." *State v. McCoy*, 171 N.C. App. 636, 638, 615 S.E.2d 319,320 (2005) (emphasis omitted); N.C. R. App. P. 21(a)(1). A writ of certiorari is a "prerogative writ[ ]" which we may issue to aid our jurisdiction. N.C. Gen. Stat. § 7A-32(c) (2025). Because issuing a writ of certiorari is an extraordinary measure, *see Button v. Level Four Orthotics & Prosthetics, Inc.*, 380 N.C. 459, 465, 869 S.E.2d 257, 264 (2022), a petitioner must first satisfy "a two-factor test[,]" *Cryan v. Nat'l Council of YMCAs*, 384 N.C. 569, 572, 887 S.E.2d 848, 851 (2023). The appellant must show (1) either "merit or that error was probably committed below," and (2) that "extraordinary circumstances" justify appellate review. *Id.* at 572–73, 887 S.E.2d at 851 (cleaned up). "There is no fixed list of 'extraordinary circumstances'

that warrant certiorari review, but this factor generally requires a showing of substantial harm, considerable waste of judicial resources, or 'wide-reaching issues of justice and liberty at stake.' " *State v. Martinez*, 390 N.C. 172, 177, 933 S.E.2d 759, 763 (2026) (quoting *Cryan*, 384 N.C. at 572–73, 887 S.E.2d at 851). "We require extraordinary circumstances because a writ of certiorari is not intended as a substitute for a notice of appeal." *Id.* at 177, 933 S.E.2d at 763 (quoting *Cryan*, 384 N.C. at 73, 887 S.E.2d at 851).

A trial court has jurisdiction to revoke a defendant's probation after its expiration period if:

> (1) before the expiration . . . the State has filed a written violation report . . . 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; and (3) the court finds for good cause shown and stated that the probation should be . . . revoked.

State v. Geter, 383 N.C. 484, 489, 881 S.E.2d 209, 213 (2022) (cleaned up); *see* N.C. Gen. Stat. § 15A-1344(f)(1)–(3) (2025). "[W]hether good cause exists, being fact-intensive and dependent on the circumstances which result in the delay of a probation revocation hearing, is a finding of fact delegated to the discretion of the trial court." *Id.* at 492, 881 S.E.2d at 215.

Here, the trial court made the required findings of good cause shown. *See id.* at 489, 881 S.E.2d at 213. The trial court received testimony that Defendant failed

to comply with his residential recovery program, failed to notify Officer Morrisey that he changed his address, and absconded during his probationary period. *See id*. at 489, 881 S.E.2d at 213. Afterward, the trial court determined that, because Defendant absconded during probation, he willfully violated the conditions of his probation and "that good cause has been shown and stated for the conduct of the hearing after the termination of the period of probation." *See id*. at 489, 881 S.E.2d at 213. Accordingly, the trial court made the required findings to retain jurisdiction over Defendant's probation revocation hearing. *See id*. at 489, 881 S.E.2d at 213. Because Defendant has not shown error or merit, he failed to satisfy *Cryan's* two-factor test. *See id*. at 572, 887 S.E.2d at 851.

III. Conclusion

For the reasons above, we deny the PWC and dismiss Defendant's appeal.

DISMISSED.

Judges COLLINS and FREEMAN concur.

Report per Rule 30(e).