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NO. COA11-336
NORTH CAROLINA COURT OF APPEALS

Filed: 18 October 2011

IN THE MATTER OF:

S.D.G.

Alamance County
No. 09 JB 68

Appeal by juvenile from orders entered 22 November 2010 and 7 December 2010 by Judge Bradley Reid Allen, Sr. in Alamance County District Court. Heard in the Court of Appeals 19 September 2011.

Attorney General Roy Cooper, by Assistant Attorney General LaToya B. Powell, for the State.

Harrington, Gilliland, Winstead, Feindel & Lucas, LLP, by Anna S. Lucas, for defendant.

THIGPEN, Judge.

S.D.G. ("the juvenile") appeals from orders revoking his probation and committing him to a youth development center for an indefinite period, but not to exceed his eighteenth birthday. Because the trial court erred in denying the juvenile's motion

to continue the hearing to revoke the juvenile's probation, we reverse and remand.

By order entered 20 July 2009, the juvenile was adjudicated delinquent for setting fire to a school building. The court placed the juvenile on probation for twelve months. After a hearing on 5 November 2009, the court found the juvenile had violated the terms of his probation and ordered the juvenile to submit to house arrest for 90 days, cooperate with an out-of-home placement at the Eckerd Wilderness Camp, and be confined at a detention facility for 14 days, serving three immediately with 11 days of confinement stayed. The court also ordered that the juvenile's probation be extended for six months.

On 29 October 2010, the Juvenile Court Counselor filed a motion for review alleging the juvenile violated the terms of his probation because he failed to "abide by [all the] rules and policies of the Alamance Burlington School System while enrolled at one of their [sic] schools while on juvenile probation." The juvenile was alleged to have been suspended for a total of 10 days, and had been committed to Holly Hill Hospital on 20 October 2010 due to "homicidal thoughts" and for stabilization of his medication. After a hearing on 4 November 2010, the trial court entered orders on 22 November 2010 and 7 December

2010, finding the juvenile had violated the terms of his probation and ordering the juvenile confined for an indefinite period of time, not to exceed his eighteenth birthday. The juvenile gave notice of appeal in open court.

The juvenile's sole argument on appeal is that the trial court erred in denying his motion to continue the hearing on the probation violation report. We agree.

Generally, "a motion to continue is addressed to the sound discretion of the trial court, and absent a manifest abuse of that discretion, the trial court's ruling is not reviewable." *State v. Rogers*, 352 N.C. 119, 124, 529 S.E.2d 671, 674-75 (2000). "However, when a motion to continue raises a constitutional issue . . . the trial court's ruling is 'fully reviewable by an examination of the particular circumstances of each case.'" *Rogers*, 352 N.C. at 124, 529 S.E.2d at 675 (quoting *State v. Searles*, 304 N.C. 149, 153, 282 S.E.2d 430, 433 (1981)). "[T]he denial of a motion to continue, whether a constitutional issue is raised or not, is sufficient grounds for the granting of a new trial only when the defendant is able to show that the denial was erroneous and that he suffered prejudice as a result of the error." *Id.*

It is implicit in the constitutional guarantees of assistance of counsel and

confrontation of one's accusers and witnesses against him that an accused and his counsel shall have a reasonable time to investigate, prepare and present his defense. A defendant must be allowed a reasonable time and opportunity to investigate and produce competent evidence, if he can, in defense of the crime with which he stands charged and to confront his accusers with other testimony.

Id. (citations and quotations omitted). "To establish a constitutional violation, a defendant must show that he did not have ample time to confer with counsel and to investigate, prepare and present his defense." *Id.* at 125, 529 S.E.2d at 675 (citations and quotations omitted).

Here, the trial court entered its order appointing counsel for the juvenile in the probation revocation matter on Tuesday, 2 November 2010. The juvenile's counsel stated that he received notification of the appointment the next day, and did not have an opportunity to review the paperwork or meet with the juvenile or his mother until the day of the hearing on Thursday, 4 November 2010. Counsel argued that he needed time to speak with the juvenile's doctors to determine whether or not the juvenile's behaviors, which were the basis of the probation violation report, could have been the result of the juvenile's "medications being out of whack," and thus the violations would not be willful. The trial court denied the motion for a

continuance at the outset of the hearing, and denied the juvenile's renewal of the motion at the close of the State's evidence.

At the hearing, the school social worker stated she was aware that the juvenile had been having difficulties with his medication, that he needed to be seen by a physician to stabilize his medications, that she thought he needed changes to his medication because he had been acting out, and that she had been part of the team that went to the magistrate's office to have the juvenile involuntarily committed to Holly Hill Hospital. However, the social worker had had no contact with the juvenile's doctors at Holly Hill since the juvenile's commitment. None of the witnesses could testify to the ultimate question of whether problems with the juvenile's medication could have impacted the willfulness of the alleged violations of the terms of his probation. We hold that under the circumstances of this case, the two days between the appointment of counsel for the juvenile and the hearing constitutes insufficient time to prepare for the hearing. Further, the juvenile was prejudiced by the trial court's denial of his motion to continue because counsel did not have time to question the juvenile's doctors about the impact of the juvenile's

medication on the willfulness of the juvenile's acts which led to the revocation of his probation. Accordingly, we reverse the orders of the trial court and remand this matter for a new probation revocation hearing.

REVERSED and REMANDED.

Chief Judge MARTIN and Judge HUNTER, JR. concur

Report per Rule 30(e).