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NO. COA11-390

NORTH CAROLINA COURT OF APPEALS

Filed: 18 October 2011

STATE OF NORTH CAROLINA

v.

Davidson County
Nos. 09 CRS 58225, 58227

RENZY ALLEN SPEAKS

Appeal by defendant from judgments entered 4 January 2011 by Judge Mark E. Klass in Davidson County Superior Court. Heard in the Court of Appeals 19 September 2011.

Attorney General Roy Cooper, by Assistant Attorney General Allison A. Angell, for the State.

Edward Eldred, Attorney at Law, PLLC, by Edward Eldred, for defendant-appellant.

THIGPEN, Judge.

Renzy Allen Speaks ("defendant") appeals from judgments revoking his probation. After careful review, we affirm.

On 11 February 2010, defendant pled guilty pursuant to a plea agreement to four counts of obtaining property by false pretenses. The trial court consolidated the four convictions into two judgments.

In the first judgment (09 CRS 058225), the trial court sentenced defendant to a term of five to six months imprisonment, but suspended the sentence and placed defendant on supervised probation for forty-eight months. In the second judgment (09 CRS 058227), the trial court sentenced defendant to a consecutive term of five to six months imprisonment. The trial court also suspended defendant's sentence and placed him on supervised probation for forty-eight months, but ordered that the term of probation begin at the expiration of the sentence imposed in the first judgment.

On 15 November 2010, probation violation reports were filed alleging that defendant had failed to comply with the terms of his probation. On 4 January 2011, a probation violation hearing was held in Davidson County Superior Court. Defendant denied violating his probation. The trial court found that defendant violated his probation without a lawful excuse, revoked his probation, and activated his suspended sentences.

On appeal, defendant argues that because the period of probation imposed in the second judgment began at the expiration of the sentence imposed in the first judgment, and because his period of probation in the first judgment had not expired, then the trial court was without authority to activate his sentence in the second judgment because the period of probation had not yet begun. We disagree.

N.C. Gen. Stat. § 15A-1346 provides that "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." N.C. Gen. Stat. § 15A-1346(a) (2009). Here, although the trial court specifically directed that defendant's probationary terms were to be served consecutively, pursuant to N.C. Gen. Stat. § 15A-1346, they were required to run concurrently as a matter of law. *See State v. Canady*, 153 N.C. App. 455, 570 S.E.2d 262 (2002); *State v. Cousar*, 190 N.C. App. 750, 660 S.E.2d 902, review denied, 362 N.C. 684, 670 S.E.2d 568 (2008). Consequently, because defendant's two periods of probation ran concurrently, the trial court was authorized to revoke defendant's probation and activate his suspended sentences in both cases. Accordingly, we affirm.

AFFIRMED.

Chief Judge MARTIN and Judge HUNTER, JR. concur.

Report per Rule 30(e).