NO. COA11-691
NORTH CAROLINA COURT OF APPEALS

Filed: 20 December 2011

STATE OF NORTH CAROLINA

v. Wake County
Nos. 08 CRS 70078
LAKEISHA RENEE FREEMAN 09 CRS 10285

Appeal by defendant from judgments entered 6 January 2011 by Judge Abraham Penn Jones in Wake County Superior Court. Heard in the Court of Appeals 28 November 2011.

Attorney General Roy Cooper, by Special Deputy Attorney General Ted R. Williams, for the State.

Hartsel & Williams, P.A., by Christy E. Wilhelm and Benjamin G. Goff, for defendant.

ELMORE, Judge.

Lakeisha Renee Freeman (defendant) appeals from judgments revoking her probation in cases 08 CRS 70078 and 09 CRS 10285. Defendant contends that the record fails to demonstrate that she was served with written notice of the conditions of her probation. We agree, and vacate the judgments.

On 3 June 2009, defendant was placed on twelve months of probation following a conviction for impaired driving in case 08 CRS 70078. Shortly thereafter, on 27 July 2009, defendant was placed on twenty-four months of probation in case 09 CRS 10285 following convictions for one count of malicious conduct by a prisoner and two counts of assault on a government official or employee.[1] On 24 February 2010, probation officer Phyllis Vaughn filed a violation report alleging that defendant had committed seven probation violations in case 08 CRS 70078. Vaughn also filed a report on or about 5 August 2010 alleging two violations in case 09 CRS 10285.

The cases came on for a probation violation hearing on 6 January 2011. Defendant denied the alleged violations. On cross-examination, Vaughn testified that she did not know whether defendant ever received written notice of the conditions of her probation:

> No, I'm not certain if she did [receive written notice]. I know they were explained

[1] We note that defendant has not included copies of the documents stating the terms of her probation in the record on appeal, such as the judgment suspending sentence or a modification order, as required by N.C.R. App. P. 9. The information recited herein pertaining to those documents comes from the judgments revoking probation and the probation violation reports, which are part of the record. We also note that the State has not moved to amend the record pursuant to N.C.R. App. 9(b)(5)(a) to include those documents.

> to her by me. She may not have received the modification order, which she was placed on intensive, she was explained the conditions of intensive probation.
>
> . . . .
>
> I don't know that she did [receive written notice]. They're usually, when they are processed, court intake, they are given a copy of their judgment as a rule. I was – I was not there to see that she got a copy of her judgment.

Following Vaughn's testimony, the State requested that the trial court take judicial notice of the entire court file, including the original judgments and plea transcripts. Neither party has sought to include those documents in the record on appeal.

After the presentation of evidence, defendant argued that the trial court could not revoke her probation because she had not received written notice of the conditions of probation. The trial court found that defendant was in willful violation of her probation and:

> [T]hat she was specifically told about the conditions of probation, certainly the ones that I found in her in violation of, sure she was provided knowledge of that. I don't know if she was handed it in writing, I'm sure it was gone over from writing with her by the probation officer. I'm satisfied, tantamount to the same thing.

The trial court entered written judgments activating defendant's suspended sentences. Defendant now appeals.

Defendant's sole argument on appeal is that the trial court erred by revoking her probation when there was insufficient evidence that she received written notice of the conditions of her probation. The State acknowledges that the record does not contain evidence that defendant was provided with written notice, and we agree.

Our General Statutes require:

> A defendant released on supervised probation must be given a written statement explicitly setting forth the conditions on which he is being released. If any modification of the terms of that probation is subsequently made, he must be given a written statement setting forth the modifications.

N.C. Gen. Stat. § 15A-1343(c) (2009).

"Oral notice to defendant of his conditions of probation is not a satisfactory substitute for the written statement required by statute." *State v. Lambert*, 146 N.C. App. 360, 369, 553 S.E.2d 71, 78 (2001), *appeal dismissed and disc. review denied*, 355 N.C. 289, 561 S.E.2d 271 (2002).

Here, the evidence and settled record fail to demonstrate that defendant received written notice of the conditions of her probation. Vaughn testified that she was not sure whether defendant ever received written notice, but stated that she orally informed defendant of the conditions. When the trial

court revoked defendant's probation, it acknowledged that it did not know whether defendant received written notice, but stated that it was satisfied defendant received oral notice. In addition, there are no documents in the record to demonstrate that defendant ever received proper written notice. As we have previously held, oral notice is not a sufficient substitute for the written notice required by N.C. Gen. Stat. § 15A-1343(c). Accordingly, we must vacate the judgments revoking defendant's probation. *Lambert*, 146 N.C. App. at 369, 553 S.E.2d at 78; *see also State v. Suggs*, 92 N.C. App. 112, 113, 373 S.E.2d 687, 688 (1988).

Vacated.

Judges McGEE and McCULLOUGH concur.

Report per Rule 30(e).