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NO. COA00-1483

NORTH CAROLINA COURT OF APPEALS

Filed: 5 February 2002

STATE OF NORTH CAROLINA

v.

Mecklenburg County  
No. 95 CRS 52610

WILLIAM ANTOINE ANDERSON

Appeal by defendant William Antoine Anderson from judgment entered 28 August 2000 by Judge Richard Boner in Mecklenburg County Superior Court. Heard in the Court of Appeals 26 November 2001.

*Attorney General Roy A. Cooper, by Assistant Attorney General Richard J. Votta, for the State.*

*Public Defender Isabel Scott Day, by Assistant Public Defender Dean Paul Loven, for defendant-appellant.*

EAGLES, Chief Judge.

On 31 July 1996, defendant William Antoine Anderson was tried in Mecklenburg County Superior Court and found guilty by a jury of sale and delivery of cocaine. The Honorable Chase B. Saunders imposed and suspended a six to eight month term of imprisonment and placed defendant on probation for three years.

On 27 May 1999, Probation Officer Pamela C. Axsom (Officer Axsom) signed and dated a probation violation report alleging that defendant failed to pay two hundred and twenty dollars in probation supervision fees and that defendant had absconded from probation.

A copy of the probation violation report was found in the clerk's office files at the time of the violation hearing but it is not indorsed with a file stamp. Defendant's three year period of probation expired on 31 July 1999.

At a probation revocation hearing on 28 August 2000, defendant admitted to violating the specified conditions of probation. The Honorable Richard D. Boner found that the alleged violations were true and willful. Judge Boner revoked defendant's probation and activated the six to eight month suspended sentence. On appeal, defendant contends that the trial court lacked jurisdiction over the subject matter of the hearing.

In *State v. Hicks*, this Court wrote:

A court's jurisdiction to review a probationer's compliance with the terms of his probation is limited by statute. . . . "When a sentence has been suspended and defendant placed on probation on certain named conditions, the court may, at any time during the period of probation, require defendant to appear before it, inquire into alleged violations of the conditions, and, if found to be true, place the suspended sentence into effect. But the State may not do so after the expiration of the period of probation except as provided in G.S. 15A-1344(f)."

*Hicks*, \_\_\_ N.C. App. \_\_\_, \_\_\_, \_\_\_ S.E.2d \_\_\_, \_\_\_ (Dec. 28, 2001) (No. COA01-256) (quoting *State v. Camp*, 299 N.C. 524, 527, 263 S.E.2d 592, 594 (1980) (citations omitted)).

Section 15A-1344(f) of the North Carolina General Statutes provides that once the period of probation has ended, the court may revoke probation only if:

- (1) Before the expiration of the period of probation the State has filed a written motion

with the clerk indicating its intent to conduct a revocation hearing; and  
(2) The court finds that the State has made reasonable effort to notify the probationer and to conduct the hearing earlier.

*Hicks*, \_\_\_ N.C. App. at \_\_\_, \_\_\_ S.E.2d at \_\_\_.

Here, defendant argues that the State lacked jurisdiction to revoke defendant's probation because the probationary period had expired and the violation report was not file stamped, and therefore not properly filed in accordance with N.C.G.S. § 15A-1344(f)(1). In the civil matter of *Bailey v. Davis*, 231 N.C. 86, 89, 55 S.E.2d 919, 921 (1949), our Supreme Court stated that "a paper writing is deemed to be filed within the meaning of the law when it is delivered for that purpose to the proper officer and received by him, and it is not necessary to the filing of a paper that it shall be indorsed as having been so filed." In a criminal case, however, North Carolina requires the State to prove jurisdiction beyond a reasonable doubt. *State v. Petersilie*, 334 N.C. 169, 175, 432 S.E.2d 832, 835 (1993). In the absence of a file stamped motion or any other evidence of the motion's timely filing as required by N.C.G.S. § 15A-1344(f)(1) the trial court is without jurisdiction. On appeal, "[w]hen the record shows a lack of jurisdiction in the lower court, the appropriate action on the part of the appellate court is to arrest judgment or vacate any order entered without authority." *Id.* at 175, 432 S.E.2d at 836 (quoting *State v. Felmet*, 302 N.C. 173, 176, 273 S.E.2d 708, 711 (1981)).

Though Officer Axsom signed and dated the violation report on 27 May 1999, the record fails to provide evidence of the report having been filed prior to the expiration of defendant's period of probation. For a trial court to retain jurisdiction over a probationer after the probation period has expired, the plain language of N.C.G.S. § 15A-1344(f) (1) requires the State to file, before the expiration of the period of probation, a written motion with the clerk indicating the State's intent to conduct a revocation hearing. *Hicks*, \_\_\_ N.C. App. at \_\_\_, \_\_\_ S.E.2d at \_\_\_. The burden of perfecting the trial court's jurisdiction for a probation revocation hearing after defendant's period of probation has expired lies squarely with the State. See N.C.G.S. § 15A-1344(f) (1999); see also *Petersilie*, 334 N.C. at 175, 432 S.E.2d at 835.

Here, the violation report was not file stamped and the record is without sufficient evidence to support the State's contention that defendant's violation report was filed before defendant's period of probation had expired. Consequently, we hold that the State failed to satisfy the plain language of N.C.G.S. § 15A-1344(f) and that the trial court was without jurisdiction to conduct a hearing. See *Hicks*, \_\_\_ N.C. App. \_\_\_, \_\_\_ S.E.2d \_\_\_. In light of this conclusion, other arguments on appeal need not be reached. Accordingly, the trial court's judgment that defendant violated terms of his probation is arrested and the order activating defendant's six to eight month suspended sentence is vacated. See *Petersilie*, 334 N.C. at 175, 432 S.E.2d at 835.

Judgment arrested and order vacated.

Judges MARTIN and BIGGS concur.

Report per Rule 30(e).