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NO. COA04-321

NORTH CAROLINA COURT OF APPEALS

Filed: 5 October 2004

STATE OF NORTH CAROLINA

v.	Pitt County
GORDAN MARK ADAMS	Nos. 01 CRS 51758
	01 CRS 51760
	01 CRS 52648
	01 CRS 55208
	01 CRS 59617
	01 CRS 59618

Appeal by defendant from judgments entered 10 November 2003 by Judge Clifton W. Everett, Jr., in Pitt County Superior Court. Heard in the Court of Appeals 4 October 2004.

*Attorney General Roy Cooper, by Assistant Attorney General Brent D. Kiziah, for the State.*

*Duncan B. McCormick, for defendant-appellant.*

TYSON, Judge.

Gordan Mark Adams ("defendant") appeals from the trial court's revocation of his probation and the activation of his suspended sentences. We remand for entry of findings of fact.

I. Background

On 15 November 2001, Judge Jack W. Jenkins in Pitt County Superior Court imposed a suspended sentence of six to eight months imprisonment upon defendant's plea of guilty in 01 CRS 55208 to forgery of an instrument pursuant to N.C. Gen. Stat. § 14-119.

Defendant was placed on supervised probation for twenty-four months. On 28 January 2002, Judge Charles M. Vincent in Pitt County District Court imposed a suspended sentence of forty-five days imprisonment upon defendant's plea of guilty in 01 CR 51758, 01 CR 51759, 01 CR 51760, and 01 CR 52648 to multiple counts of worthless checks pursuant to N.C. Gen. Stat. § 14-107. The trial court placed defendant on supervised probation for twelve months. After finding that defendant had violated the terms of his probation on 21 July 2003, the trial court revoked defendant's probation, modified his sentence to thirteen days, and activated the sentence. Defendant appealed the judgment to superior court.

On 13 June 2002, Judge Clifton W. Everett, Jr., in Pitt County Superior Court imposed consecutive sentences totaling twenty to twenty-four months imprisonment upon defendant's pleas of guilty in 01 CRS 59617 to possession with intent to sale and deliver cocaine and in 01 CRS 59618 to possession of a stolen fireman. The trial court suspended the two sentences and placed defendant on supervised probation for twenty-four months.

Defendant's probation officer filed violation reports for the four judgments on 23 July 2003 and filed addendums to the violation reports on 28 August 2003. Counsel was appointed to represent defendant on 26 September 2003. At the probation revocation hearing on 10 November 2003, defendant admitted the violations in each of the four cases. He admitted to: (1) being in possession of a marijuana-like substance and a bottle of clear-flush body purifier; (2) failing to obtain or retain satisfactory employment;

(3) being convicted of assault on a female and four counts of communicating threats; and (4) failing to make his whereabouts known to his probation officer.

The State argued that defendant had failed to appear on a \$75,000.00 bond in July, was on his fourteenth case of probation, and had fifteen pending charges at the time of the hearing. Defense counsel stated that defendant "has a stress-related mental condition which he has some difficulty controlling." Defendant requested that the trial court invoke his sentences, and he asked the trial court to modify the judgments to run the sentences concurrently.

After finding that defendant had admitted to willfully violating the conditions of his probation and had elected to have his probation in each of the cases terminated, the trial court activated the suspended sentences. The trial court did not modify the sentences, two of which were concurrent (01 CRS 51758 and 01 CRS 55208) and two of which were consecutive (01 CRS 59617 and 01 CRS 59618). The judgments indicate that defendant elected to serve his suspended sentences. Following entry of the trial court's judgments on 10 November 2003, defendant gave notice of appeal on 18 November 2003.

## II. Issue

Defendant contends the trial court abused its discretion by imposing consecutive active terms of imprisonment after activating his suspended sentences. He points to his admission of his probation violations, his stress-related mental condition, and his

request for concurrent active sentences in support of his contention.

### III. Concurrent and Consecutive Sentences

It is "within the authority and discretion of the judge revoking defendant's probation to run the sentence either concurrently or consecutively." *State v. Campbell*, 90 N.C. App. 761, 763, 370 S.E.2d 79, 80, *appeal dismissed and disc. rev. denied*, 323 N.C. 367, 373 S.E.2d 550 (1988); N.C. Gen. Stat. § 15A-1344(d) (2003). The trial court heard allegations of and defendant admitted to violating four conditions of his probation. Defense counsel referred to a "stress-related mental condition" in connection with defendant's failure to make his whereabouts known to his probation officer after 31 July 2003, but provided no supporting evidence for the assertion. Although the trial court declined to modify the sentences after activating them, there is no indication that the trial court believed it was bound by the original sentences or lacked the jurisdiction to modify them. See *State v. Partridge*, 110 N.C. App. 786, 788, 431 S.E.2d 550, 551-52 (1993). Defendant has shown no abuse of discretion. This assignment of error is overruled.

Although not raised by defendant, each of the four judgments contains an error. While the trial court found in open court that defendant had admitted violating the conditions of his probation, the judgments merely reflect that defendant's suspended sentences were activated at defendant's election. The statutory provision that permitted a defendant at his election to serve a suspended

sentence of imprisonment was repealed prior to the offense dates found in the four judgments. See N.C. Gen. Stat. § 15A-1341(c), *repealed by* 1995 N.C. Sess. Laws Ch. 429, § 2 (effective 1 January 1997). The trial court must make specific findings of fact in the judgments. We remand the judgments for entry of proper findings.

Remanded for entry of findings.

Judges WYNN and GEER concur.

Report per Rule 30(e).