

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA05-1247

NORTH CAROLINA COURT OF APPEALS

Filed: 18 April 2006

STATE OF NORTH CAROLINA

v.

Randolph County
No. 05 CRS 108

RICHARD CHAMBERS,
Defendant.

Appeal by Defendant from judgment entered 6 June 2005 by Judge Edwin G. Wilson, Jr. in Superior Court, Randolph County. Heard in the Court of Appeals 20 March 2006.

Attorney General Roy Cooper, by Special Deputy Attorney General William P. Hart and Assistant Attorney General Kathleen U. Baldwin, for the State.

Appellate Defender Staples Hughes, by Assistant Appellate Defender Katherine Jane Allen, for defendant-appellant.

WYNN, Judge.

A defendant at a probation revocation hearing has a statutory right to counsel akin to the right enjoyed in a criminal trial.¹ In this case, Defendant argues that the trial court failed to make a sufficient inquiry into Defendant's waiver of counsel. Because the trial court's offer to appoint counsel for Defendant satisfied

¹See N.C. Gen. Stat. § 15A-1345(e) (2005); *State v. Warren*, 82 N.C. App. 84, 85, 345 S.E.2d 437, 439 (1986).

only the first of the three inquires required by North Carolina law,² we must remand this matter for a new hearing.

On 23 May 1990, Defendant pled guilty to two counts of taking indecent liberties and one count of second degree sex offense. Defendant's sentence was suspended and he was placed on supervised probation for five years, the period of probation to begin upon Defendant's release from prison on another conviction. Defendant was released in February 2004. Subsequently, on 12 May 2005, a probation violation report was filed alleging that Defendant had violated his probation.

On 6 June 2005, a probation violation hearing was held in Superior Court, Randolph County. Defendant appeared without counsel. The trial court inquired whether Defendant had an attorney, and Defendant responded that he did not want one. The court offered to appoint an attorney to represent Defendant, but he declined. The trial court directed Defendant to sign a waiver of counsel form. Defendant then denied the probation violation. Prior to hearing testimony from Defendant's probation officer, the trial court again offered to appoint Defendant counsel. Defendant again declined. The hearing proceeded, and the trial court found that Defendant had violated his probation without lawful excuse, revoked his probation and activated his suspended sentence. Defendant appeals.

Defendant argues that the trial court failed to make a

²N.C. Gen. Stat. § 15A-1242 (2005).

sufficient inquiry into Defendant's waiver of counsel in accordance with section 15A-1242 of the North Carolina General Statutes. We agree.

A defendant at a probation revocation hearing has a statutory right to counsel akin to the right enjoyed in a criminal trial. See N.C. Gen. Stat. § 15A-1345(e); *Warren*, 82 N.C. App. at 85, 345 S.E.2d at 439. "[T]he right to assistance of counsel may only be waived where the defendant's election to proceed *pro se* is 'clearly and unequivocally' expressed and the trial court makes a thorough inquiry as to whether the defendant's waiver was knowing, intelligent and voluntary." *State v. Evans*, 153 N.C. App. 313, 315, 569 S.E.2d 673, 675 (2002) (quoting *State v. Carter*, 338 N.C. 569, 581, 451 S.E.2d 157, 163 (1994), *cert. denied*, 531 U.S. 843, 148 L. Ed. 2d 67, *rehearing denied*, 531 U.S. 1002, 148 L. Ed. 2d 475 (2000)). This Court has stated that "[t]his mandated inquiry is satisfied only where the trial court fulfills the requirements of N.C. Gen. Stat. § 15A-1242." *Id.*

Section 15A-1242 provides:

A defendant may be permitted at his election to proceed in the trial of his case without the assistance of counsel only after the trial judge makes thorough inquiry and is satisfied that the defendant:

(1) Has been clearly advised of his right to the assistance of counsel, including his right to the assignment of counsel when he is so entitled;

(2) Understands and appreciates the consequences of this decision; and

(3) Comprehends the nature of the charges and proceedings and the range of permissible

punishments.

N.C. Gen. Stat. § 15A-1242. Here, the trial court offered to appoint Defendant counsel. However, the trial court's offer satisfied only the first of the three inquiries required by section 15A-1242 of the North Carolina General Statutes. There is no inquiry on the record to indicate that Defendant understood the consequences of his decision to proceed *pro se*, or that he comprehended the nature of the charges, the proceedings, or the range of permissible punishments. See N.C. Gen. Stat. § 15A-1242(2), (3). "The provisions of this statute are mandatory and failure to conduct this inquiry constitutes prejudicial error." *State v. Hyatt*, 132 N.C. App. 697, 703, 513 S.E.2d 90, 94 (1999). Although Defendant executed a written waiver of counsel, this alone was insufficient to comply with the statute. "The execution of a written waiver is no substitute for compliance by the trial court with the statute. A written waiver is 'something in addition to the requirements of N.C. Gen. Stat. § 15A-1242, not . . . an alternative to it.'" *Evans*, 153 N.C. App. at 315, 569 S.E.2d at 675 (citations omitted). Accordingly, the judgment and commitment revoking Defendant's probation is reversed and remanded for a new hearing.

Reversed and remanded.

Judges MCGEE and HUNTER concur.

Report per Rule 30(e).