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NO. COA05-1596

NORTH CAROLINA COURT OF APPEALS

Filed: 17 October 2006

STATE OF NORTH CAROLINA

v.

Cumberland County
03 CRS 59624, 60471

DANIEL ELIJAH MELVIN,
Defendant.

Appeal by defendant from judgments entered 26 September 2005 by Judge Gary L. Locklear in the Superior Court in Cumberland County. Heard in the Court of Appeals 12 September 2006.

Attorney General Roy Cooper, by Assistant Attorney General Yvonne B. Ricci, for the State.

William D. Spence, for defendant-appellant.

HUDSON, Judge.

On 9 December 2004, defendant pled guilty to larceny, breaking and entering a motor vehicle, possession of a stolen motor vehicle, and fleeing to elude arrest in Cumberland County. The court gave defendant a suspended sentence and placed him on supervised probation. On 21 September 2005, defendant's probation officer filed a violation report. At the 26 September 2005 criminal session of the superior court in Cumberland County, the court found that defendant had violated his probation, ordered his probation

revoked, and activated his sentence. Defendant appeals, and for the reasons discussed below, we reverse and remand.

Defendant argues that the court erred in failing to conduct the statutorily required inquiry as to whether defendant knowingly, intelligently and voluntarily waived his right to counsel. We agree.

A defendant is entitled to the assistance of counsel at a probation violation hearing. N.C. Gen. Stat. § 15A-1345(e) (2006).

A defendant may waive 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 (2006). The requirements of N.C. Gen. Stat. § 15A-1242 are mandatory where a defendant requests to proceed *pro se* in a probation revocation hearing. *State v. Evans*, 153 N.C. App. 313, 315, 569 S.E.2d 673, 675 (2002). "The execution of a written waiver is no substitute for compliance by the trial court with the statute." *Id.*

Here, the record reveals that the court told defendant that he had the right to hire an attorney or have one appointed and that a probation violation could lead to an active jail sentence. After the defendant stated that he wanted to represent himself, the court

had him sign a waiver of counsel and proceeded with the hearing. As the State concedes in its brief, the court did not question defendant about his comprehension of the nature of the charges against him or about the range of possible punishments he faced as required by N.C. Gen. Stat. § 15A-1242.

Because we remand for a new hearing, we need not reach defendant's second assignment of error, that the trial court abused its discretion in revoking defendant's probation.

Reversed and remanded.

Judges WYNN and TYSON concur.

Report per Rule 30(e).