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NO. COA06-1246

NORTH CAROLINA COURT OF APPEALS

Filed: 01 May 2007

STATE OF NORTH CAROLINA

v.

Northhampton County
No. 04 CRS 1156

GLORIA ANN TAYLOR

Appeal by defendant from judgment entered 26 April 2006 by Judge Thomas D. Haigwood in Northhampton County Superior Court. Heard in the Court of Appeals 09 April 2007.

Attorney General Roy Cooper, by Assistant Attorney General Vanessa N. Totten, for the State.

Bryan Emery Gates, Jr., for defendant-appellant.

STEELMAN, Judge.

Defendant Gloria Ann Taylor appeals from judgment entered upon revocation of her probation. For the following reasons, we affirm.

On 25 October 2004, defendant pled guilty to possession of stolen goods. The trial court sentenced defendant to eleven to fourteen months imprisonment, suspended the sentence and placed defendant on twelve months supervised probation. On 25 August 2005, defendant's probation officer filed a probation violation report alleging that defendant had failed to pay her monetary obligation and failed to report to her probation officer as ordered in the

judgment.

A probation violation hearing was heard before Judge Thomas D. Haigwood on 26 April 2006. Defendant executed a written waiver of counsel and proceeded *pro se*. After hearing testimony, the trial court concluded that defendant wilfully violated her probation, and then revoked defendant's probation. The trial court activated her sentence, reduced it to nine to eleven months imprisonment and recommended defendant be placed in the Mary Frances Treatment Center. Defendant appeals.

Defendant contends the trial court erred by allowing her to proceed *pro se* without conducting an inquiry as required by N.C. Gen. Stat. § 15A-1242. At the call of the matter for hearing, the following transpired:

THE COURT: Ms. Taylor, good afternoon. Ms. Taylor, do you understand that if your probation were revoked you could be required to serve the active sentence that has been suspended? Do you understand?

DEFENDANT: Yes, sir.

THE COURT: Do you understand that you are entitled to be represented by a lawyer in the matter or you may choose to represent yourself?

THE DEFENDANT: (Witness nods head in affirmative.)

THE COURT: You have to say yes or no.

THE DEFENDANT: Yes.

THE COURT: Thank you. Do you understand that if you want to be represented by a lawyer you should hire your own if you can afford to but if you are unable to afford a lawyer but need one or want one you can ask me to consider appointing you a lawyer at the State expense;

do you understand?

THE DEFENDANT: Yes.

THE COURT: How do you wish to proceed, with or without a lawyer?

THE DEFENDANT: Without.

THE COURT: You are going to represent yourself?

THE DEFENDANT: Yes.

THE COURT: All right. I'll ask that you sign a paper or document. The sheriff will hand you the paper there. If you will sign that paper stating that you will represent yourself.

(Whereupon, the Defendant signs waiver.)

Before a defendant in a probation revocation is allowed to represent himself, the court must comply with the requirements of N.C. Gen. Stat. § 15A-1242. See *State v. Evans*, 153 N.C. App. 313, 314-15, 569 S.E.2d 673, 674-75 (2002). 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 (2005).

"The provisions of N.C. Gen. Stat. § 15A-1242 are mandatory where the defendant requests to proceed *pro se*. The execution of a written waiver is no substitute for compliance by the trial court with the statute." *Evans* at 315, 569 S.E.2d at 675 (citation omitted). When a claim is made relating to the adequacy of the foregoing statutory inquiry, "the critical issue is whether the statutorily required information has been communicated in such a manner that defendant's decision to represent himself is knowing and voluntary." *State v. Carter*, 338 N.C. 569, 583, 451 S.E.2d 157, 164 (1994). The inquiry detailed in N.C. Gen. Stat. § 15A-1242 has been deemed sufficient to meet the constitutional standards in determining "whether the defendant knowingly, intelligently, and voluntarily waives the right to in-court representation by counsel." *State v. Thomas*, 331 N.C. 671, 674, 417 S.E.2d 473, 476 (1992).

We believe the court's discussion with defendant in open court was sufficient to satisfy the mandate of N.C. Gen. Stat. § 15A-1242. The trial judge's inquiry in the case at bar clearly informed defendant that if she was found to have violated probation, then she faced the possible consequences of having her suspended sentence activated. The court also clearly informed defendant that she had the right to the assistance of an attorney. Defendant's responses clearly indicated that she understood. Because the court's inquiry elicited the information necessary for it to make a determination that defendant's decision to represent herself was knowing and voluntary, we conclude the court complied with the requirements of the statute and with defendant's

constitutional rights.

Accordingly, the trial court's judgments revoking defendant's probation are affirmed.

AFFIRMED.

Judges MCCULLOUGH and LEVINSON concur.

Report per Rule 30(e).