

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA06-1273

NORTH CAROLINA COURT OF APPEALS

Filed: 1 May 2007

STATE OF NORTH CAROLINA

v.

Cumberland County
No. 06 CRS 10910

JEROME ANTHONY RICH

Appeal by defendant from judgment entered 12 June 2006 by Judge E. Lynn Johnson in Cumberland County Superior Court. Heard in the Court of Appeals 30 April 2007.

Attorney General Roy Cooper, by Assistant Attorney General Kathryn J. Thomas, for the State.

Assistant Appellate Defender, Emily H. Davis, for defendant-appellant.

LEVINSON, Judge.

Jerome Anthony Rich (defendant) appeals from the revocation of his probation and activation of a sentence for possession with the intent to manufacture, sell and deliver cocaine. On 8 May 2006, a probation violation report was filed against defendant in Cumberland County Superior Court. On 12 June 2006, defendant appeared at the probation revocation hearing without counsel. At the hearing, Judge Johnson made the following inquiry prior to permitting defendant to proceed pro se:

THE COURT: . . . Mr. Rich, the purpose of interacting with you this morning is to advise you of certain rights you have on a probation violation matter. First, you understand the allegations made against you?

PROBATIONER: Yes, sir.

THE COURT: Knowing those things, do you desire to have an attorney represent you, whether it be court-appointed or retained; and, your third option is to represent yourself. You have those three options, hire an attorney, court-appointed counsel, or represent yourself.

PROBATIONER: I'll represent myself.

THE COURT: All right. You sure you want to do that?

PROBATIONER: Yes, sir.

THE COURT: I mean, these are your decisions and not mine.

PROBATIONER: Yes, sir.

THE COURT: All right. Well, located to your immediate right is a waiver of counsel; and, what you're executing, sir, is a waiver of your right to both court-appointed and retained counsel.

The dispositive issue on appeal is whether the trial court erred in allowing defendant to represent himself without establishing that defendant's waiver of his right to counsel was knowing, voluntary and intelligent. Specifically, defendant contends that the trial court's inquiry failed to comply with the requirements of N.C. Gen. Stat. § 15A-1242 which provides as follows:

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 trial court must comply with the requirements of this statute before a defendant in a probation revocation is allowed to represent himself. *State v. Proby*, 168 N.C. App. 724, 726, 608 S.E.2d 793, 794 (2005).

The defendant asserts that the above colloquy between the trial court and the defendant does not satisfy the second and third requirements of the statute. Moreover, the State has conceded in its brief that the trial court failed to satisfy the statute and that defendant is entitled to a new probation revocation hearing. We agree.

While the trial court does communicate to defendant his option to have counsel appointed for him, the trial court neither determined whether defendant understood the consequences of his election, nor related the possible range of punishments he faced. Consequently, we conclude that the trial court failed to satisfy the requirements of G.S. § 15A-1242. Furthermore, the fact that defendant signed a waiver of counsel form is insufficient in this case to cure the trial court's noncompliance with the statute. See

State v. Evans, 153 N.C. App. 313, 315, 569 S.E.2d 673, 675 (2002) (holding that "[a] written waiver is 'something in addition to the requirements of N.C. Gen. Stat. § 15A-1242, not ... an alternative to it.'" (quoting *State v. Hyatt*, 132 N.C. App. 697, 703, 513 S.E.2d 90, 94 (1999))). Accordingly, we reverse the judgment and remand for a new hearing.

Reversed and Remanded.

Judges MCCULLOUGH and STEELMAN concur.

Report per Rule 30(e).