NO. COA07-293

NORTH CAROLINA COURT OF APPEALS

Filed: 4 September 2007

STATE OF NORTH CAROLINA

v. Caldwell County
No. 05 CRS 50044

LASHUN DIANTEA ELLIS

Appeal by defendant from judgment entered 1 December 2006 by Judge James W. Morgan in Superior Court, Caldwell County. Heard in the Court of Appeals 27 August 2007.

Attorney General Roy Cooper, by Assistant Attorney General Scott K. Conklin, for the State.

William D. Spence for defendant-appellant.

WYNN, Judge.

Under our appellate rules, to preserve a question for appellate review a defendant "must have presented to the trial court a timely request, objection or motion, stating the specific grounds for the ruling the party desired the court to make."[1] Here, we find that Defendant Lashun Diantea Ellis made no objection at his probation revocation hearing as to either the validity or substance of the conditions imposed as part of his probation. We therefore conclude that he has not preserved these questions for

[1] N.C. R. App. P. 10(b)(1).

appellate review and accordingly dismiss his appeal.

On 17 May 2006, Defendant pled guilty to selling cocaine and was sentenced to a term of twelve to fifteen months' imprisonment. The trial court suspended Defendant's sentence and placed him on supervised probation for thirty-six months. On 7 September 2006, the trial court modified Defendant's probation, adding the special condition that he "successfully complete 90 day DART program."

On 6 November 2006, a probation violation report was filed alleging that Defendant had willfully violated:

> 1. Special Condition of Probation "Attend or reside in a residential program for the specified period of time and obey all rules and regulations of the program until discharge. . ." in that [defendant] WAS ORDERED TO ATTEND AND COMPLETE THE DART PROGRAM AND HE ABSCONDED THE DART PROGRAM ON 10-28-06 AFTER ONLY 4 DAYS WITHOUT LAWFUL EXCUSE[.]"

The trial court held a probation violation hearing on 27 November 2006, at which Defendant admitted to the violation and his probation officer also testified regarding the violation. The trial court then found that Defendant willfully violated the conditions of his probation and accordingly revoked Defendant's probation and activated his suspended sentence.

Defendant appeals, arguing that the trial court erred by (I) revoking Defendant's probation based on the violation of a condition that was never imposed on Defendant, and (II) finding and concluding that Defendant violated a valid condition of his probation, when the condition was not valid. Defendant notes that the violation report alleges that he violated the condition of his

probation that he "attend or reside in a residential program[,]" but asserts that this was never actually a condition of his probation. Defendant further contends that, although he was required to complete the DART program as a special condition of his probation, no time limit was set for its completion, such that this condition of his probation could have been completed at any time during the term of his probation.

Nevertheless, we decline to review Defendant's arguments. Although Defendant appeared with counsel at his probation revocation hearing, where he admitted to violating his probation and did not deny willfulness, Defendant also made no arguments whatsoever in front of the trial court that the condition of probation allegedly violated had not been imposed, or that it was permissible for him to complete the DART program at any time during the period of probation. Defendant thus failed to preserve these arguments for appellate review. *See* N.C. R. App. P. 10(b)(1) ("In order to preserve a question for appellate review, a party must have presented to the trial court a timely . . . objection or motion, stating the specific grounds for the ruling the party desired the court to make . . ."); *State v. Wiley*, 355 N.C. 592, 615, 565 S.E.2d 22, 39 (2002) ("It is well settled that an error . . . that defendant does not bring to the trial court's attention is waived and will not be considered on appeal." (citations omitted)), *cert. denied*, 537 U.S. 1117, 154 L. Ed. 2d 795 (2003).

Dismissed.

Judges BRYANT and ELMORE concur.

Report per Rule 30(e).