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NO. COA08-130

NORTH CAROLINA COURT OF APPEALS

Filed: 2 December 2008

IN THE MATTER OF:

R.C.

McDowell County
No. 06 J 50

Appeal by respondent from order entered 20 September 2007 by Judge C. Randy Pool in McDowell County District Court. Heard in the Court of Appeals 13 October 2008.

Attorney General Roy Cooper, by Assistant Attorney General Judith Tillman, for the state.

Janna D. Allison for respondent-appellant.

ELMORE, Judge.

Respondent R.C. (Respondent) appeals from the order continuing his probation for six months. For the following reasons we affirm.

Respondent was adjudicated delinquent on 29 August 2006, upon a finding that he committed felony breaking and entering and unauthorized use of a motor vehicle. The trial court placed respondent on supervised probation for six months. On 6 February 2007, court counselor Dawn Cronan filed a "Motion for Review" alleging that respondent had violated his probation by: (1) not attending school regularly; and (2) not attending his community service. After finding that respondent had violated his probation,

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the trial court extended respondent's probation for another six months and ordered respondent to cooperate with placement in a wilderness program. Respondent was placed with the Eckerd Wilderness Program in April of 2007.

Court counselor Cronan filed another "Motion for Review" on 14 August 2007, requesting the court to extend respondent's probation an additional six months pursuant to N.C. Gen. Stat. § 7B-2510 to allow respondent to successfully complete the Eckerd Wilderness Program. The trial court held a hearing on the motion on 20 September 2007. At the review hearing, court counselor Cronan testified that respondent had made progress at the wilderness program; that he had developed leadership skills and had worked on his school and behavioral issues. Cronan testified that while respondent had cooperated with the placement in the wilderness program, respondent would need six more months to complete the program.

Respondent moved to dismiss after the State presented its evidence. He argued that the State had not met its burden of showing that "there's any risk to the community" or "keeping [respondent] on probation and in the wilderness camp will do anything to safeguard his welfare" pursuant to N.C. Gen. Stat. § 7B-2510(c). The trial court stated, that it would "take that request under advisement" and then asked if respondent wished to present any evidence. When respondent's attorney informed the court that he would present evidence, the court stated, "I'll be glad to hear that."

Respondent testified that he had turned his behavior around since attending the wilderness program, but would like go home with his mother and attend regular school. Respondent's mother testified that respondent had made a lot of progress at the wilderness camp and that she "would like to see him finish." Respondent renewed his motion to dismiss. The trial court found that "it would be in the best interest of the juvenile, would promote his welfare, for him to complete the program at Eckerd Camp." The trial court, in its own discretion, extended respondent's probationary period for an additional six months. By order filed 27 September 2007, the trial court ordered "that the juvenile continue his probation for 6 months, until 2-19-2008." Respondent appeals.

In his sole assignment of error brought forward, respondent contends the trial court erred when it failed to rule on his motion to dismiss he made at the close of the State's evidence in violation of N.C. Gen. Stat. § 15A-1227.

N.C. Gen. Stat. § 15A-1227 provides in pertinent part:

(a) A motion for dismissal for insufficiency of the evidence to sustain a conviction may be made at the following times:

- (1) Upon close of the State's evidence.
- (2) Upon close of all the evidence.

. . .

(c) The judge must rule on a motion to dismiss for insufficiency of the evidence before the trial may proceed.

N.C. Gen. Stat. § 15A-1227(a) and (c) (2007).

To support his contention that the trial court's failure to comply with N.C. Gen. Stat. § 15A-1227 requires reversal, respondent cites to *State v. Garnett*, 4 N.C. App. 367, 167 S.E.2d 63 (1969), *overruled on other grounds by State v. Barnes*, 324 N.C. 539, 380 S.E.2d 118 (1989) and *State v. Hernandez*, ___ N.C. App. ___, 655 S.E.2d 426 (2008). These cases upon which respondent relies involve motions to dismiss at criminal jury trials. Respondent here moved to dismiss during a review hearing to extend the juvenile's probation, which is a dispositional hearing and "may be informal." See N.C. Gen. Stat. § 7B-2501 (2007). While the better practice would have been for the trial court to specifically deny the motion, the trial court effectively did so by informing respondent that he would hear respondent's evidence. Further, respondent has not shown the trial court committed prejudicial error by failing to specifically rule on his motion. N.C. Gen. Stat. § 7B-2510 confers upon the trial court the discretion to extend a juvenile's probation for an additional period of one year after a hearing. See N.C. Gen. Stat. § 7B-2510(c), (d) and (e). We conclude the trial court did not abuse its discretion in extending respondent's probation.

Affirm.

Judges WYNN and GEER concur.

Report per Rule 30(e).