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NO. COA10-226

NORTH CAROLINA COURT OF APPEALS

Filed: 7 September 2010

STATE OF NORTH CAROLINA

v. Nash County  
Nos. 08 CRS 50783, 50795  
08 CRS 54034

STEVEN WADE MOTT, JR.,  
Defendant.

Appeal by defendant from judgments entered 28 September 2009 by Judge Quentin T. Sumner in Nash County Superior Court. Heard in the Court of Appeals 24 August 2010.

*Attorney General Roy Cooper, by Assistant Attorney General Donald R. Teeter, Sr., for the State.*

*Lucas & Ellis, PLLC, by Anna S. Lucas, for defendant-appellant.*

HUNTER, Robert C. Judge.

Defendant Steven Wade Mott, Jr., appeals from the 28 September 2009 judgments entered upon the revocation of his probation. Defendant contends that the trial court failed to conduct a sufficient inquiry before allowing him to waive his right to counsel and proceed *pro se*. We reverse and remand for a new probation revocation hearing.

On 1 October 2008, defendant pled guilty to breaking and entering, larceny, and two counts of breaking and entering a motor vehicle. The trial court consolidated the convictions into two

judgments, and imposed consecutive terms of 6 to 8 months imprisonment. The trial court suspended the sentences and imposed 36 months of supervised probation. The trial court ordered defendant to pay a total of \$5,539.50 in restitution and other fees and costs.

On 28 May 2009, Officer Jackie Boone filed a probation violation report alleging that defendant had failed to make required payments and was \$925.00 in arrears on his total obligations and \$210.00 in arrears on his probation supervision fee. The case came on for a probation revocation hearing on 28 September 2009.

At the hearing, the trial court addressed defendant:

THE COURT: Mr. Mott, do you have a lawyer, sir? Do you have a lawyer, sir?

DEFENDANT: No, sir.

THE COURT: Do you understand you have a right to have a lawyer to represent you?

DEFENDANT: Yes, sir.

THE COURT: If you're unable to hire one, I'll be happy to appoint a lawyer for you or your [sic] may hire your own lawyer, sir or you may proceed with a lawyer. What would you like to do?

DEFENDANT: Actually, Your Honor, I would like to go ahead and take care of this today, because I -

THE COURT: What do you want to do about your lawyer, sir? Do you want - do you want me to appoint someone for you or do you want to hire one or do you wish to proceed without a lawyer? Those are your options.

DEFENDANT: Proceed without a lawyer.

THE COURT: All right, sir, come around and sign a waiver for me, please.

After defendant signed a written waiver of his right to counsel, he admitted to violating the conditions of his probation. The trial court revoked defendant's probation and activated the suspended sentences. Defendant gave oral notice of appeal at the conclusion of the hearing and filed written notice of appeal on 7 October 2009.

Defendant's sole argument on appeal is that the trial court failed to conduct an adequate inquiry pursuant to N.C. Gen. Stat. § 15A-1242 (2009) before allowing him to waive his right to counsel at the probation revocation hearing. We agree.

A defendant at a probation revocation hearing has a statutory right to counsel. N.C. Gen. Stat. § 15A-1345(e) (2010); *State v. Warren*, 82 N.C. App. 84, 85, 345 S.E.2d 437, 439 (1986). "[T]he right to assistance of counsel may only be waived where the defendant's election to proceed *pro se* is 'clearly and unequivocally' expressed and the trial court makes a thorough inquiry as to whether the defendant's waiver was knowing, intelligent and voluntary." *State v. Evans*, 153 N.C. App. 313, 315, 569 S.E.2d 673, 675 (2002) (quoting *State v. Carter*, 338 N.C. 569, 581, 451 S.E.2d 157, 163 (1994), *cert. denied*, 531 U.S. 843, 148 L. Ed. 2d 67 (2000)). "This mandated inquiry is satisfied only where the trial court fulfills the requirements of N.C. Gen. Stat. § 15A-1242." *Id.*

The statute dictates that a defendant may only be allowed to waive his right to counsel after the trial court makes "thorough inquiry" that 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.

In this case, the trial court failed to conduct an adequate inquiry pursuant to N.C. Gen. Stat. § 15-1242. The trial court determined that defendant was not represented by counsel and arguably advised defendant of his right to the assistance of counsel and to appointed counsel. The trial court, however, failed to inquire as to whether defendant understood and appreciated the consequences of representing himself or whether he understood the nature of the proceedings and the range of permissible punishments. As we have previously held, defendant's signed waiver did not excuse the trial court from fulfilling the requirements of N.C. Gen. Stat. § 15A-1242. *State v. Debnam*, 168 N.C. App. 707, 708, 608 S.E.2d 795, 796 (2005). Accordingly, we reverse the judgments revoking defendant's probation and remand the matter for a new probation revocation hearing.

Reversed and Remanded.

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Judges BRYANT and STEELMAN concur.

Reported per Rule 30(e).