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NO. COA11-206
NORTH CAROLINA COURT OF APPEALS

Filed: 6 September 2011

STATE OF NORTH CAROLINA

v. Buncombe County
Nos. 05CR63479;
EUNESSA SUZANNE LAWSON 05CR63909;
06CR64414-17

Appeal by defendant from judgments entered on or about 4 November 2010 by Judge W. Robert Bell in Superior Court, Buncombe County. Heard in the Court of Appeals 18 July 2011.

Attorney General Roy A. Cooper, III, by Assistant Attorney General Melody R. Hairston, for the State.

Peter Wood, for defendant-appellant.

STROUD, Judge.

Eunessa Suzanne Lawson ("defendant") pled guilty on 15 May 2009 to six counts of felonious forgery and uttering. The court entered judgments on the same date sentencing defendant to three terms of a minimum of eight months and a maximum of ten months imprisonment, to run consecutively. The court suspended the sentences and placed defendant on supervised probation for sixty months.

On 11 January 2010, defendant's probation officer executed violation reports charging defendant with violations of certain terms and conditions of probation. On 4 November 2010, defendant appeared for a hearing upon the allegations of the violation reports. Defendant waived a formal reading of the charges and admitted to willful commission of the charged violations. After hearing arguments by defendant's counsel and her probation officer as to the appropriate disposition, the court declared:

In these matters, based on the admissions of the defendant, the court finds that she's in violation of the terms and conditions of her probation, that said violations are willful and without lawful excuse. The court will terminate the probation and activate the sentences. Give her credit for whatever time her lawyer certifies and enter a judgment and lien in the amount of \$150 for her attorney's fees.

The court entered three written judgments activating the eight to ten month sentences. The judgments provided that the sentences run consecutively.

The sole issue is whether the court erred by ordering in the written judgments that the sentences are to run consecutively when the court did not expressly state in open court that the sentences are to run consecutively. Defendant argues she was not present at the time of the entry of the

written judgments and thus the court deprived her of the right to be present at the time of pronouncement of judgment. For this reason, defendant submits the judgments should be vacated and the matter remanded for imposition of concurrent sentences.

Defendant cites *State v. Hanner*, 188 N.C. App. 137, 141, 654 S.E.2d 820, 823 (2008), in which this Court held that the defendant's right to be present during sentencing was violated when the court, in its written judgment, imposed a sentence which differed from what was rendered in open court. In that case, at the conclusion of the revocation hearing, the court stated that the sentences were to run as stated in the original judgments, which would have been concurrently. *Id.* at 141-42, 654 S.E.2d 820,823. However, in the written judgments activating the sentences, the court directed the sentences to run consecutively. *Id.*

We find *Hanner* is factually distinguishable. The trial court expressly stated in open court in *Hanner* that the sentence be in effect "just as it was given[,] " referring to the original sentences, which ran concurrently. *Id.* at 139, 654 S.E.2d at 822. In the case at bar, when the court stated, in defendant's presence, that it "will terminate the probation and activate the sentences," it was referring to the sentences originally

entered, which were to run consecutively. The court's written judgments are consistent with the original sentences. We thus find no variance between the sentence pronounced in open court and the sentences in the written judgments. Defendant's contention is overruled.

AFFIRMED.

Judges CALABRIA and STEELMAN concur.

Report per Rule 30(e).