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NO. COA12-724
NORTH CAROLINA COURT OF APPEALS

Filed: 4 December 2012

STATE OF NORTH CAROLINA

v.

Cleveland County
No. 11 CRS 2598

ZANE CHRISTOPHER DODGEN

Appeal by defendant from judgment entered 1 September 2011 by Judge James W. Morgan in Cleveland County Superior Court. Heard in the Court of Appeals 26 November 2012.

Roy Cooper, Attorney General, by Rajeev K. Premakumar, Assistant Attorney General, for the State.

Bryan Gates for defendant-appellant.

MARTIN, Chief Judge.

Defendant Zane Christopher Dodgen appeals from the judgment entered upon revocation of his probation and activation of his suspended sentence. We affirm.

On 8 July 2010, defendant pled guilty to assault by strangulation and resisting a public officer. The trial court sentenced defendant to six to eight months imprisonment, suspended the sentence, and imposed supervised probation for a

term of twenty-four months. Defendant's probation officer filed a violation report on 13 July 2011 alleging that defendant had violated the condition of his probation that "he commit no criminal offense."

On 14 July 2011, Judge Forrest D. Bridges held a pre-trial hearing at which defendant executed a written waiver of counsel form that was certified by Judge Bridges. Judge Morgan held a probation revocation hearing on 1 September 2011. Defendant appeared without counsel, admitted the violation alleged in the July 2011 violation report, and asked Judge Morgan to run any activated sentence concurrent with the active sentence he was then currently serving. The trial court found that defendant willfully violated conditions of his probation, revoked his probation, activated his suspended sentence, and ordered the sentence to run at the expiration of the sentence defendant was currently serving. Defendant appeals.

Defendant contends the trial court erred by allowing him to proceed *pro se* without conducting an inquiry pursuant to N.C. Gen. Stat. § 15A-1242. We disagree.

A criminal defendant has a right to counsel during a probation revocation hearing, including the right to refuse counsel and proceed *pro se*. *State v. Evans*, 153 N.C. App. 313,

315, 569 S.E.2d 673, 674-75 (2002). "However, the 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." *Id.* at 315, 569 S.E.2d at 675 (citations omitted). The trial court's inquiry is only satisfied when the court fulfills these statutory requirements:

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 (2011). Where a defendant requests to proceed *pro se*, the provisions of section 15A-1242 are mandatory. *State v. Debnam*, 168 N.C. App. 707, 708, 608 S.E.2d 795, 796 (2005).

In *State v. Warren*, 82 N.C. App. 84, 89, 345 S.E.2d 437,

441 (1986), the defendant argued that the trial court erred by allowing him to proceed *pro se* at his probation revocation hearing "because there is no record that the trial court informed him of the range of permissible punishment he could receive from the probation violations, [therefore] his waiver could not have been knowing and voluntary." *Id.* at 87, 345 S.E.2d at 439. The defendant signed a written waiver that was certified by the trial court. *Id.* at 87, 345 S.E.2d at 440. When the trial court asked the defendant if he had anything to say at the probation hearing, the defendant replied:

[Defendant]: Yes, sir. I just - I'm already doing time and I'd like to say that I'm guilty naturally by being sentenced. In other words, I automatically revoked my probation, but ask if anyway possible, since this sentence is to be run consecutive - I lay myself on the mercy of the Court.

Id. at 88, 345 S.E.2d at 440. We held that the defendant's statement "suggests that [the] defendant *did* comprehend the nature of the charges and proceedings and at least the maximum possible punishment." *Id.* Therefore, our Court was "constrained to infer from the written, signed waiver and the court's certification thereof, that the dictates of G.S. Sec. 15A-1242 were followed. [The d]efendant has simply failed to show that the waiver he executed was not knowing and voluntary." *Id.*

In the present case, the following inquiry occurred at the July 2011 pre-trial hearing:

THE COURT: Zane Christopher Dodgen. Mr. Dodgen, do you understand why you are here?

MR. DODGEN: Yes, sir.

THE COURT: You're charged with probation violation. It is alleged that you were placed on probation July of 2010 by Judge Williamson under a suspended sentence of six to eight months with a period of probation of 24 months.

The allegations are that you were convicted of a subsequent offense of breaking and entering and larceny after breaking and entering which you were convicted of that in July of this year.

You have a right to be represented by a lawyer. You can hire one, get the Court to appoint one or represent yourself; which do you want to do?

MR. DODGEN: Your Honor, I'd like to represent myself and ask that, if possible, my sentence be activated and run with the concurrent [12-15] I'm doing now.

THE COURT: All right, please swear him to the waiver.

(THE DEFENDANT WAS DULY SWORN AND WAIVED HIS RIGHT TO A COURT-APPOINTED ATTORNEY.)

THE COURT: Show that probable cause is found. Let the matter be set for a hearing at a later time. The defendant is going to represent himself.

At the start of the probation revocation hearing, the following colloquy occurred:

DISTRICT ATTORNEY: Mr. Dodgen, please stand up. Mr. Dodgen has already waived at a prior term of court. This is in file 11-CRS-2598 probation violation. He was writted [sic] in.

I have a note that he wanted at a prior term of court to have his sentence activated but for some reason Judge Bridges didn't want to hear the matter.

THE COURT: Is that still your request, sir?

MR. DODGEN: Yes, sir. To have it run concurrent with my active sentence I'm doing now.

We conclude the court's discussion with defendant in open court was sufficient to satisfy the mandate of N.C. Gen. Stat. § 15A-1242. The trial court explained that defendant had the option to hire an attorney or have one appointed. Additionally, the trial court made it clear that the proceeding was a probation violation which could result in the activation of a six to eight month sentence. Further, there is no indication that defendant misunderstood the proceeding as defendant twice requested that any activated sentence be run concurrently with the sentence he was currently serving. Taken together, the court's inquiries were sufficient to ascertain whether defendant understood the consequences of proceeding without counsel.

Accordingly, we hold the trial court did not err in allowing defendant to proceed *pro se*.

Affirmed.

Judges STROUD and HUNTER, JR. concur.

Report per Rule 30(e).