

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA13-361  
NORTH CAROLINA COURT OF APPEALS

Filed: 19 November 2013

STATE OF NORTH CAROLINA

v.

Craven County  
Nos. 12 CRS 837-38

CARLA MARIE ROSSI

Appeal by Defendant from judgments entered 27 August 2012 by Judge Benjamin G. Alford in Superior Court, Craven County. Heard in the Court of Appeals 22 October 2013.

*Attorney General Roy Cooper, by Assistant Attorney General Erin O’Kane Scott, for the State.*

*Jarvis John Edgerton, IV for Defendant-Appellant.*

McGEE, Judge.

Carla Marie Rossi (“Defendant”) appeals from judgments revoking probation and activating two consecutive sentences of eight to nineteen months. Defendant contends she did not knowingly waive counsel at the probation revocation hearing. We vacate and remand.

Defendant pled guilty to two counts of obtaining property by false pretense, one count of misdemeanor larceny, and one

count of larceny by anti-inventory device tampering. The trial court entered two judgments on 28 June 2012, suspending consecutive sentences of eight to nineteen months and placing Defendant on supervised probation for thirty-six months. Defendant's probation officer filed violation reports on 3 August 2012, alleging that Defendant had absconded.

At Defendant's probation revocation hearing on 27 August 2012, the following occurred:

THE COURT: Ms. Rossi, you have a right to remain silent. Anything you say may be used against you. If you're found to have willfully violated your probation, *you could be ordered to serve those two concurrent eight- to 19-month sentences.* You have a right to have a lawyer help you with your case. If you can't afford one, I will appoint one. Do you understand those rights?

THE DEFENDANT: Yes.

THE COURT: Do you wish to proceed with a lawyer, or without?

THE DEFENDANT: Without.

THE COURT: Sign a waiver of a right to all assistance of counsel, and be sworn to it.

(Defendant complies.) (Emphasis added).

After hearing arguments from the State and Defendant, the trial court revoked Defendant's probation and entered judgments imposing two terms of eight to nineteen months, to run

*consecutively*. On or about 30 August 2012, Defendant mailed a handwritten note to the clerk of superior court in which Defendant stated she was told by her probation officer that she was only going to serve one sentence of eight to nineteen months and that she was never told by the district attorney, trial judge, or probation officer that she was going to serve two consecutive terms of eight to nineteen months. Defendant stated she "was completely mislead [sic] and I need to appeal this judgment so I can get an attorney if this is the case." The trial court treated Defendant's handwritten note, filed 4 September 2012, as a notice of appeal and filed appeal entries on 12 October 2012.

The right to counsel extends to probation revocation proceedings. N.C. Gen. Stat. § 15A-1345(e) (2011). Before allowing a defendant to waive the right to counsel, a trial court must make thorough inquiry in accordance with N.C. Gen. Stat. § 15A-1242 and be satisfied that the defendant (1) has clearly been advised of the right to counsel, including the right to appointment of counsel, (2) understands and appreciates the consequences of a decision to waive counsel, and (3) comprehends the nature of the charges and proceedings and the range of possible punishments. *State v. Thomas*, 331 N.C. 671,

674, 417 S.E.2d 473, 476 (1992). The trial court must affirmatively show that all three prongs have been satisfied through inquiry by the trial court, or else any written waiver of counsel is invalid. *State v. Sorrow*, 213 N.C. App. 571, 577, 713 S.E.2d 180, 184 (2011). In the present case, as in *Sorrow*,

there is nothing in the record or the transcript indicating that the trial court conducted a thorough inquiry that showed that "defendant understands and appreciates the consequences of the decision to proceed *pro se*, and that the defendant comprehends the nature of the charges and proceedings and the range of possible punishments."

*Id.* (citations omitted).

In this case, the trial court failed to make adequate inquiry to determine whether Defendant understood and appreciated the consequences of a decision to waive counsel. As we noted in *Sorrow*, this inquiry ideally could have entailed informing Defendant that, if she represented herself, she would be held to the same rules and procedures as a lawyer and that the trial judge could not assist or offer legal advice. *Id.* at 578-79, 713 S.E.2d at 184-85 (citing with favor a fourteen point "checklist" published by The University of North Carolina at Chapel Hill School of Government "designed to satisfy requirements of" N.C.G.S. § 15A-1242"). Although the trial court did advise Defendant of the range of possible punishments,

it did so incorrectly by telling Defendant she faced the possibility of concurrent, instead of consecutive, sentences. Indeed, Defendant's handwritten note suggests that Defendant's decision to proceed without counsel was based upon statements made to her that she would be serving only one sentence. Defendant clearly did not, and in fact could not, have understood the range of possible punishments she was facing based upon the inquiry conducted. Defendant's written waiver is "not presumed to have been knowing, intelligent, and voluntary because 'the rest of the record indicates otherwise.'" *Id.* (citations omitted).

For the foregoing reasons, we vacate the judgments and remand for further proceedings.

Vacated and remanded.

Judges BRYANT and STROUD concur.

Report per Rule 30(e).