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NO. COA13-529
NORTH CAROLINA COURT OF APPEALS

Filed: 19 November 2013

STATE OF NORTH CAROLINA

v. Cumberland County
Nos, . 97CRS2927-28; 97CRS3634
10CRS51009-11
CLARA LAWSON,
Defendant.

Appeal by defendant from Judgments entered on or about 28 January 2013 by Judge James Floyd Ammons, Jr. in Superior Court, Cumberland County. Heard in the Court of Appeals 22 October 2013.

Attorney General Roy A. Cooper III, by Assistant Attorney General Tenisha S. Jacobs, for the State.

Irons & Irons, P.A., by Ben G. Irons, II, for defendant-appellant.

STROUD, Judge.

Clara Lawson ("defendant") appeals from judgments entered on or about 29 January 2013 revoking her probation and activating her sentence. On or about 14 April 2010, defendant pled guilty to three counts of forgery and three counts of obtaining a controlled substance by misrepresentation. The

three forgery offenses were committed on 6 January 1997, 8 January 1997, and 13 January 1997. The three controlled substance offenses were committed on 13 October 2008, 15 December 2008, and 4 February 2009. Each group of offenses was consolidated into one judgment. Defendant was sentenced to consecutive periods of six to eight months confinement, each suspended for twenty-four months of supervised probation.

Between 10 May 2012 and 5 July 2012, defendant's probation officer filed several violation reports, alleging that defendant was in arrears on her required payments, that defendant had failed to report on a number of occasions, and that defendant "is making herself unavailable for supervision and is classified as an absconder."

On 28 January 2013, the Superior Court entered a judgment finding that defendant had willfully violated the terms of her probation by failing to report as directed on a number of occasions and failing to pay costs and fees as required. The trial court revoked defendant's probation for absconding from supervision under N.C. Gen. Stat. § 15A-1343(b)(3a) (2011). Defendant gave notice of appeal in open court.

Defendant argues that the trial court erred in revoking her probation for absconding when that condition was not applicable to her, given the dates of her offenses. We agree.

All of defendant's relevant probation violations occurred after 1 December 2011. Therefore, under the Justice Reinvestment Act, the trial court could only revoke defendant's probation if she "(1) commits a new crime in violation of N.C. Gen. Stat. § 15A-1343(b)(1); (2) absconds supervision in violation of N.C. Gen. Stat. § 15A-1343(b)(3a); or (3) violates any condition of probation after serving two prior periods of CRV under N.C. Gen. Stat. § 15A-1344(d2)." *State v. Nolen*, ___ N.C. App. ___, ___, 743 S.E.2d 729, 730 (2013); N.C. Gen. Stat. § 15A-1344(a) (2011). But defendant's underlying offenses were all committed before 1 December 2011. Therefore, the absconding condition of N.C. Gen. Stat. § 15A-1343(b)(3a) does not apply to her. See *id.* at ___, 743 S.E.2d at 731 (recognizing that the absconding condition only applies to offenses committed after 1 December 2011); *State v. Hunnicutt*, ___ N.C. App. ___, ___, 740 S.E.2d 906, 911 (2013) ("[T]he new absconding condition [applies] only to offenses committed on or after 1 December 2011."). Defendant's probation cannot be revoked for violating a condition that does not apply to her.

The State did not allege or prove that defendant had committed a new criminal offense, in violation of N.C. Gen. Stat. § 15A-1343(b)(1). As outlined by *Nolen* and *Hunnicuttt*, the absconding provision in N.C. Gen. Stat. § 15A-1343(b)(3a) does not apply to defendant because her underlying offenses were committed prior to 1 December 2011. Finally, defendant has never been subject to a CRV under N.C. Gen. Stat. § 15A-1344(d2). Therefore, we conclude that there was no basis upon which the trial court could revoke defendant's probation. See N.C. Gen. Stat. § 15A-1344(a); *Nolen*, ___ N.C. App. at ___, 743 S.E.2d at 730. We hold that the trial court erred in revoking defendant's probation and activating her sentence. Accordingly, we reverse the judgment entered upon revocation of defendant's probation; we remand to the trial court for entry of an appropriate judgment for defendant's admitted probation violations consistent with the provisions of N.C. Gen. Stat. § 15A-1344.

REVERSED and REMANDED.

Judges MCGEE and BRYANT concur.

Report per Rule 30(e).