

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA14-995
NORTH CAROLINA COURT OF APPEALS

Filed: 17 March 2015

STATE OF NORTH CAROLINA

v.

Wilson County
No. 10 CRS 4123

DERON RUFFIN

Appeal by Defendant from judgment entered 14 April 2014 by Judge Milton F. Fitch, Jr., in Wilson County Superior Court. Heard in the Court of Appeals 23 February 2015.

Attorney General Roy Cooper, by Assistant Attorney General Phyllis A. Turner, for the State.

Peter Wood for Defendant.

STEPHENS, Judge.

Defendant appeals from a judgment entered upon revocation of probation. We dismiss without prejudice.

On 19 January 2011, Defendant pled guilty to one count of second-degree kidnapping and one count of sexual battery. The trial court consolidated the offenses for judgment, imposed a suspended sentence of 25 to 39 months of imprisonment, and placed Defendant on supervised probation for 60 months. Defendant's

probation officer filed a violation report on 14 October 2011. The court found Defendant had violated the conditions of his probation, but the violations were not willful, and, on 31 October 2011, entered an order modifying a special condition of Defendant's probation.

Defendant's probation officer filed a violation report on 27 November 2013, alleging that Defendant: (1) failed to meet his monetary obligations and (2) absconded by avoiding supervision and by deliberately staying away from his residence to avoid contact with law enforcement and his probation officer. On 28 February 2014, Defendant was appointed counsel to represent him at the probation revocation hearing.

The hearing on Defendant's alleged probation violations was called on 14 April 2014, at which point Defendant expressed confusion regarding the identity of his appointed counsel:

THE COURT: Stand, Mr. Deron Ruffin.

[]DEFENDANT: Tartt Thomas.

THE COURT: He said Tart[t] Thomas. This man right here?

THE CLERK: We show Robert Farris was appointed.

THE COURT: Sir, stand up. Mr. Tartt Thomas is not your lawyer.

They say Mr. Robert Farris is your lawyer by appointment.

[]DEFENDANT: All right.

THE COURT: You see Mr. Farris up here?

[]DEFENDANT: Yes.

THE COURT: Two Farris, the one on the right closest to me.

This exchange suggests that Defendant had never met Farris prior to the hearing. Nothing in the transcript or record on appeal indicates that Defendant and Farris had an opportunity to speak before the beginning of the hearing. The transcript does reveal however, that Farris did not participate in any meaningful way in the hearing:

[THE STATE]: Deron Ruffin, Your Honor.

THE COURT: What are we doing? Violation?

[THE STATE]: Yes, sir.

THE COURT: Admit or deny?

[]DEFENDANT: Yes, sir.

THE COURT: Admit?

[]DEFENDANT: Yes, sir.

THE COURT: Willful?

[]DEFENDANT: Yes, sir.

THE COURT: All right. You haven't paid your court indebtedness. You only paid \$365.

\$264 in arrears. Total amount is \$1,912.50, plus the \$273 in costs, \$60 miscellaneous. Ordered to pay monthly supervision fees. You're \$1,360 in arrears having paid no money. Failed to report as instructed by message notes, phone conversations. Stayed away from your place of residence to avoid contact with law enforcement, probation officer, thus absconding. Okay.

Anything you want to tell me, Mr. Farris?

MR. FARRIS: I'd like to, but I hadn't had any contact with him either.

THE COURT: All right. Revoke and invoke his active sentence.

MR. FARRIS: Thank you.

From revocation of probation and activation of his sentence, Defendant appeals.

Defendant's sole argument on appeal is that he received ineffective assistance of counsel ("IAC"). We dismiss this appeal without prejudice so that Defendant may raise his claim in a motion for appropriate relief in the superior court.

It is well established that ineffective assistance of counsel claims brought on direct review will be decided on the merits when the cold record reveals that no further investigation is required, i.e., claims that may be developed and argued without such ancillary procedures as the appointment of investigators or an evidentiary hearing. Thus, when this Court reviews ineffective assistance of counsel claims on direct appeal and determines that they have been brought prematurely, we dismiss those claims without

prejudice, allowing [the] defendant to bring them pursuant to a subsequent motion for appropriate relief in the trial court.

State v. Thompson, 359 N.C. 77, 122-23, 604 S.E.2d 850, 881 (2004) (citations and internal quotation marks omitted), *cert. denied*, 546 U.S. 830, 163 L. Ed. 2d 80 (2005).

The basis of Defendant's IAC claim is that Farris lacked the time necessary to prepare an adequate defense on Defendant's behalf. See *State v. Atkinson*, 7 N.C. App. 355, 358, 172 S.E.2d 249, 252 (1970) ("A defendant charged with the violation of conditions of a probation sentence is entitled to representation by an attorney. Where a defendant is entitled to counsel, this requirement is not complied with as a mere formality and [i]t does not contemplate that counsel shall be compelled to act without being allowed reasonable time within which to understand the case and prepare for the defense.") (citations and internal quotation marks omitted).

As noted *supra*, the hearing transcript does not clearly indicate whether Farris had a chance to review Defendant's case file, speak with him, or undertake any attempt to "understand the case and prepare [a] defense" prior to the start of the hearing. Farris's remark to the trial court that he would "like to [advocate on Defendant's behalf], but . . . hadn't had any contact with"

Defendant could mean that Farris did not feel he had been given adequate time to prepare an effective representation for Defendant. It could also mean that Farris found himself in the same position as Defendant's probation officer – unable to find Defendant. Despite this, Farris did not request a continuance. *See id.* Resolution of these issues requires an evidentiary hearing.

On the cold record before us, we simply cannot adequately address the merits of Defendant's claim, including any prejudice that may have inured to Defendant. Accordingly, this appeal is

DISMISSED WITHOUT PREJUDICE.

Chief Judge MCGEE and Judge HUNTER, JR. concur.

Report per Rule 30(e).