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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-356

Filed: 1 November 2016

Buncombe County, Nos. 14CRS816–18

STATE OF NORTH CAROLINA

v.

MICHELLE LYNN BAILEY

Appeal by defendant from judgments entered 17 December 2015 by Judge Alan Z. Thornburg in Buncombe County Superior Court. Heard in the Court of Appeals 8 September 2016.

Attorney General Roy Cooper, by Assistant Attorney General Joseph L. Hyde, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender James R. Grant, for defendant.

DIETZ, Judge.

Defendant Michelle Lynn Bailey appeals the revocation of her probation based on new criminal convictions. Bailey argues that the statements by the trial court during the revocation hearing suggest that the court believed it was required to revoke her probation, and that the court therefore misapprehended the law, which grants the trial court discretion in these matters.

As explained below, we reject this argument. The trial court entered a written order that plainly indicates the trial court understood that it was not required to revoke Bailey's probation, that the court considered other possible sanctions for the violation, and that the court concluded in its sound discretion that revocation was appropriate. Accordingly, we affirm the trial court's judgments.

Facts and Procedural History

On 29 May 2012, Defendant Michelle Lynn Bailey pleaded guilty in Yancey County Superior Court to three separate counts of sale or delivery of controlled substances. The trial court sentenced Bailey to three consecutive 12–15 month terms of imprisonment, suspended the sentences, and placed her on supervised probation.

On 22 October 2015, Bailey's probation officer filed violation reports for each underlying conviction alleging the same five violations: (1) that Bailey had failed a drug test more than a year earlier; (2) that she had missed a scheduled appointment with her probation officer on 10 June 2015; (3) that she was in arrears with respect to the monetary conditions of her probation; (4) that she had not yet completed required drug treatment programs; and (5) that, on 16 September 2014, she was convicted of a new criminal offense of uttering a forged instrument.

On 17 December 2015, the trial court held a hearing on the probation violation reports. At the conclusion of the hearing, the trial judge revoked Bailey's probation and activated her suspended sentences. Bailey timely appealed.

Analysis

Bailey argues on appeal that the trial court erred by revoking her probation based on its mistaken belief that it was required to do so. As explained below, we reject Bailey's argument.

Under the Justice Reinvestment Act, a trial court's authority to revoke probation is limited "to those circumstances in which the probationer: (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*, 228 N.C. App. 203, 205, 743 S.E.2d 729, 730 (2013) (citing N.C. Gen. Stat. § 15A-1344(a)). Thus, Bailey's new criminal convictions were a proper basis on which the trial court could revoke her probation and activate her suspended sentences. *See id.*

In circumstances where revocation is permissible, a trial court's decision whether to revoke probation (or impose some lesser sanction) is a discretionary one. *See State v. Murchison*, 367 N.C. 461, 464, 758 S.E.2d 356, 358 (2014). "When a trial court fails to exercise its discretion in the erroneous belief that it has no discretion as to the question presented, there is error." *State v. Maness*, 363 N.C. 261, 286-87, 677 S.E.2d 796, 812 (2009).

STATE V. BAILEY

Opinion of the Court

Here, Bailey argues that the trial court did not understand it had discretion to revoke her probation because, at the hearing, the trial court made the following observation: “Each violation is—well strike that. The violation that she commit no criminal offense require and allow the Court to revoke her probation and activate her suspended sentence.” Bailey contends that this comment indicates the trial court believed it was required to revoke Bailey’s probation.

We reject this argument because the trial court later revoked Bailey’s probation in a written order that expressly indicates that the court understood it was *not* required to revoke Bailey’s probation. “[A]s a general proposition, the written and entered order or judgment controls over an oral rendition of that order or judgment.” *In re O.D.S.*, __ N.C. App. __, __, 786 S.E.2d 410, 417, *disc. rev. denied*, __ N.C. __, __ S.E.2d __ (2016). This rule applies in the context of probation revocation. *State v. Hancock*, __ N.C. App. __, __, 789 S.E.2d 522, 525 (2016).

Here, each of the trial court’s written judgments states the following:

Based upon the Findings of Fact . . . , the Court concludes that the defendant has violated a valid condition of probation upon which the execution of the active sentence was suspended, and that continuation, modification or special probation or criminal contempt is not appropriate, and the Court ORDERS that the defendant’s probation be revoked, that the suspended sentence be activated, and the defendant be imprisoned.

The trial court also checked a box under the notation “The Court may revoke defendant’s probation (check all that apply)” indicating that it was revoking Bailey’s

STATE V. BAILEY

Opinion of the Court

probation for committing a new criminal offense.¹ This language plainly indicates that the trial court was aware that it was not required to revoke Bailey's probation, that the court considered other possible sanctions for the violation, and that the court concluded in its sound discretion that revocation was appropriate. Accordingly, we affirm the trial court's judgment.

Conclusion

For the reasons set out above, we affirm the trial court.

AFFIRMED.

Judges HUNTER, JR. and McCULLOUGH concur.

Report per Rule 30(e).

¹ The fact that the trial court entered its judgment on a preprinted, standardized form is of no consequence. *See State v. Johnson*, __ N.C. App. __, __, 782 S.E.2d 549, 552 (2016); *State v. Henderson*, 179 N.C. App. 191, 197, 632 S.E.2d 818, 822 (2006).