

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-447

Filed: 3 December 2019

Robeson County, No. 17 CRS 53313

STATE OF NORTH CAROLINA

v.

TIMOTHY O'NEAL LOCKLEAR, JR.

Appeal by Defendant from judgment entered 5 February 2019 by Judge James G. Bell in Robeson County Superior Court. Heard in the Court of Appeals 18 November 2019.

Attorney General Joshua H. Stein, by Assistant Attorney General Sherri H. Lawrence, for the State.

Mary McCullers Reece for Defendant-Appellant.

DILLON, Judge.

Defendant Timothy O'Neal Locklear, Jr. appeals from a judgment revoking his probation.

I. Background

In 2017, Defendant pleaded guilty to larceny after breaking or entering. The trial court sentenced Defendant to a term of seven to eighteen (18) months of

STATE V. LOCKLEAR

Opinion of the Court

imprisonment, suspended Defendant's sentence, and placed him on supervised probation for thirty (30) months.

In November 2018, the State filed a probation violation report alleging a number of violations by Defendant.

Three months later, in February 2019, the trial court held a probation violation hearing. At the beginning of the hearing, the trial court asked Defendant "do you want a court appointed attorney, [to] represent yourself, or [to] hire your own [attorney]?" Defendant responded that he wanted to represent himself. The trial court then directed Defendant to sign a waiver of counsel form. However, the trial court did not engage in the colloquy as required by N.C. Gen. Stat. § 15-1242. Defendant admitted to the first and third allegations in the probation violation report. The trial court found that Defendant willfully violated the terms of his probation, revoked Defendant's probation, and activated his suspended sentence. Defendant appeals.

II. Analysis

Defendant argues the trial court erred by allowing him to represent himself without establishing that his waiver of counsel was knowing, voluntary, and intelligent as required by Section 15A-1242. The State concedes error, and we agree.

Here, Defendant executed a written waiver of counsel that was certified by the trial court. However, "[t]he fact that defendant signed a written waiver

STATE V. LOCKLEAR

Opinion of the Court

acknowledging that he was waiving his right to assigned counsel does not relieve the trial court of its duty to go through the requisite inquiry with defendant to determine whether he understood the consequences of his waiver.” *State v. Pena*, ___ N.C. App. ___, ___, 809 S.E.2d 1, 7-8 (2017), *disc. review denied*, ___ N.C. ___, 813 S.E.2d 236 (2018) (citing *State v. Evans*, 153 N.C. App. 313, 315, 569 S.E.2d 673, 675 (2002)). “A written waiver is ‘something in addition to the requirements of N.C. Gen. Stat. § 15A-1242, not . . . an alternative to it.’ ” *Evans*, 153 N.C. App. at 315, 569 S.E.2d at 675 (quoting *State v. Hyatt*, 132 N.C. App. 697, 703, 513 S.E.2d 90, 94 (1999)). The failure by the trial court to conduct a proper inquiry under section 15A-1242 automatically amounts to prejudicial error. *State v. Pruitt*, 322 N.C. 600, 603, 369 S.E.2d 590, 592 (1988).

III. Conclusion

In this case, the trial court wholly failed to conduct the inquiry mandated by Section 15A-1242. The State concedes this error. Accordingly, we vacate the judgment revoking Defendant’s probation and remand for a new hearing.

VACATED AND REMANDED.

Judges DIETZ and MURPHY concur.

Report per Rule 30(e).