

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA19-1041

Filed: 18 August 2020

Wilson County, No. 17CRS 50354, 50358

STATE OF NORTH CAROLINA

v.

JAMI-JO DENISE LAMM-SMITH, Defendant.

Appeal by Defendant from judgments entered 9 July 2019 by Judge Walter H. Godwin, Jr., in Wilson County Superior Court. Heard in the Court of Appeals 13 May 2020.

Attorney General Joshua H. Stein, by Assistant Attorney General Erin E. McKee, for the State.

Sandra Payne Hagood for the Defendant.

DILLON, Judge.

Jami-Jo Denise Lamm-Smith (“Defendant”) appeals from the trial court’s order revoking her probation. Defendant argues that the trial court violated N.C. Gen. Stat. § 15A-1345(e) (2019) by not intervening *sua sponte* to provide Defendant with a chance to speak on her own behalf at her revocation hearing where her counsel was present and spoke on her behalf. After careful review, we affirm.

I. Background

On 14 August 2018, Defendant pleaded guilty in two cases to multiple counts of passing worthless checks. She received a suspended sentence and was granted 24 months of supervised probation.

While Defendant was on probation, her officer filed two violation reports against her. The first report alleged that she failed to report on eight occasions, failed to make restitution payments as ordered, and failed to attend required mental health treatment. The second report alleged that she committed and was convicted of two separate acts of misdemeanor larceny.

In response to these reports, a probation violation hearing was held. Counsel for Defendant waived presentation of the evidence and admitted to the actions as alleged in the reports but not to an allegation that the actions were done willfully. For example, her counsel explained to the court that she had missed restitution payments due to her incarceration.

Nevertheless, the trial court found that Defendant willfully violated the conditions of her probation as alleged. Accordingly, Defendant's probation was revoked, and her suspended sentences were activated in both cases. After the judge announced his sentence, Defendant attempted to speak, remarking, "So then I don't pay this money back Your Honor? I didn't get to speak to the judge at all."

II. Analysis

Opinion of the Court

Defendant argues that the trial court preempted Defendant's right to speak on her own behalf at her revocation hearing, in violation of N.C. Gen. Stat. § 15A-1345(e). As a result, Defendant argues that she is entitled to a new revocation hearing so that the court's finding as to the willfulness of her actions can be revisited. We disagree with Defendant's arguments.

As an initial matter, we note that Defendant failed to give oral notice of appeal at trial and did not otherwise comply with the technical requirements of N.C. R. App. P. 4. Nevertheless, Defendant petitioned this Court for writ of *certiorari*, which we hereby grant.

A. Standard of Review

Defendant argues that the trial court committed a statutory error, which we review *de novo*. See *State v. Cotton*, 318 N.C. 663, 668, 351 S.E.2d 277, 280 (1987). "Under a *de novo* review, the court considers the matter anew and freely substitutes its own judgment for that of the lower tribunal." *State v. Williams*, 362 N.C. 628, 632-33, 669 S.E.2d 290, 294 (2008).

B. Defendant's Argument

N.C. Gen. Stat. § 15A-1345(e) outlines a defendant's rights at a probation revocation hearing. This statute states in relevant part that "the probationer may appear and speak in [her] own behalf" and "may present relevant information." N.C. Gen. Stat. § 15A-1345(e). In interpreting a statute, the words and phrases of a statute

must be interpreted within the context of other provisions of the statute. *In re Hardy*, 294 N.C. 90, 95, 240 S.E.2d 367, 371 (1978). The interpretation must also give effect to the reason and purpose of the statute. *Id.* at 97, 240 S.E.2d at 372. Notably, this statute differentiates the rights of a defendant in a probation revocation hearing from the constitutional and statutory rights of a defendant during a criminal prosecution. Indeed, our Supreme Court has recognized that “[t]he rights of an offender in a proceeding to revoke his conditional liberty under probation are not coextensive with the Federal constitutional rights of one on trial in a criminal prosecution.” *See State v. Hewett*, 270 N.C. 348, 351, 154 S.E.2d 476, 478 (1967). The defendant’s rights are different because “[t]he inquiry of the court at such a hearing is not directed to the probationer’s guilt or innocence, but to the truth of the accusation of a violation of probation.” *Id.* at 352, 154 S.E.2d at 479.

A defendant’s right to speak at a probation revocation hearing is similar to a defendant’s right to speak at a sentencing hearing. In *State v. Rankins*, our Court addressed a defendant’s statutory right to speak on her own behalf before the pronouncement of a sentence under N.C. Gen. Stat. § 15A-1334(b). 133 N.C. App. 607, 515 S.E.2d 748 (1999). The statutory language at issue in *Rankins* states that the “defendant at the hearing may make a statement in his own behalf.” N.C. Gen. Stat. § 15A-1334(b). In *Rankins*, the defendant, who was represented by counsel, waited until *after the court had ruled* to personally attempt to speak. *Rankins*, 133

N.C. App at 613, 515 S.E.2d at 752. Our Court held that although N.C. Gen. Stat. § 15A-1334(b) expressly grants a defendant the right to speak at the sentencing hearing, it “does not require the trial court to personally address the defendant and ask him if he wishes to make a statement in his own behalf.” *Id.* at 613, 515 S.E.2d at 752. Further, we held that once the trial court had ruled, “it was too late in the proceedings to inform the court of mitigating factors relevant to sentencing or to plead for leniency.” *Id.* at 614, 515 S.E.2d at 752.

Here, just as in *Rankins*, Defendant was represented by counsel and did not attempt to speak herself until *after* the court had ruled. Thus, Defendant was not deprived of her rights under N.C. Gen. Stat. § 15A-1345 at the hearing. And, while Defendant had the right to speak at the hearing, the court was neither required to personally address the Defendant and give her an opportunity to speak nor hear from Defendant after it had ruled. For the purpose of this hearing, it was sufficient that Defendant’s counsel spoke and presented evidence on Defendant’s behalf.

Defendant contends that *State v. Coltrane*, 307 N.C. 511, 299 S.E.2d 199 (1983), supports her contention that defendants must be given the opportunity to speak at a probation revocation hearing. We conclude that this case does not control. In *Coltrane*, the defendant was not represented by counsel; and when she attempted to speak at the hearing, the judge cut her off mid-sentence. *Id.* at 515, 299 S.E.2d at 202. The judge proceeded to make a ruling that the defendant had violated her

Opinion of the Court

probation willfully or without lawful excuse when there was no competent evidence in the record to support that conclusion. *Id.* at 516, 299 S.E.2d at 202. Thus, *Coltrane* differs from the present case.

Here, though, Defendant was represented by counsel and did not attempt to speak until after the trial court had ruled. Further, there was evidence in the record to support the trial court's conclusion that Defendant willfully or without lawful excuse violated the conditions of her probation. Specifically, the judge determined that "being convicted of a subsequent criminal offense in and of itself is sufficient to justify the revocation of probation." *See Hewett*, 270 N.C. at 353, 154 S.E.2d at 480 ("All that is required in a [revocation hearing] is that the evidence be such as to reasonably satisfy the judge in the exercise of his sound discretion that the defendant has willfully violated a valid condition of probation or that the defendant has violated without lawful excuse a valid condition upon which the sentence was suspended.").

Assuming that the trial court did err, we conclude that Defendant, here, has failed to show prejudice. Defendant seems to argue that she was deprived a chance to explain away any evidence that she had acted willfully in failing to make restitution payments, etc. However, there is nothing to indicate that any explanation would have had bearing on the trial court's stated grounds for revoking probation, namely that Defendant had committed other crimes.

III. Conclusion

STATE V. LAMM-SMITH

Opinion of the Court

We hold that Judge Godwin did not commit reversible error in this case. Therefore, we affirm Judge Godwin's decision to revoke probation.

AFFIRMED.

Judges STROUD and YOUNG concur.

Report per Rule 30(e).