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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-762

No. COA22-244

Filed 15 November 2022

Lee County, No. 18 CRS 51162

STATE OF NORTH CAROLINA

v.

WILLIAM ARTHUR BAKER

Appeal by defendant from judgment entered 23 November 2021 by Judge Charles W. Gilchrist in Lee County Superior Court. Heard in the Court of Appeals 6 September 2022.

Attorney General Joshua H. Stein, by Assistant Attorney General Heather Haney, for the State.

Richard Croutharmel for defendant-appellant.

ZACHARY, Judge.

¶ 1

Defendant William Arthur Baker appeals from the trial court's judgment revoking his probation and activating his suspended sentence. After careful review, we affirm the judgment.

Background

¶ 2 On 6 December 2018, Defendant pleaded guilty, pursuant to an agreement with the State, to two counts of violating a domestic violence protective order and one count of felony stalking. The trial court accepted Defendant’s guilty plea and entered a judgment, *inter alia*, sentencing Defendant to an active term of 10 to 21 months, suspending the sentence, placing Defendant on supervised probation for 18 months with the special condition that Defendant serve 90 days in jail, and ordering Defendant to pay court costs and fees.

¶ 3 On 3 March 2020, approximately three months before Defendant’s supervised probation was scheduled to expire, Defendant’s probation officer filed a probation violation report. The report alleged that Defendant had violated the conditions of his probation by failing to report to his probation officer; failing to make himself available for a home visit; failing to make required monetary payments; and committing new criminal offenses—specifically, by violating a domestic violence protective order and assaulting a female—while on probation.

¶ 4 After a hearing on the alleged violations, the trial court entered an order on 22 September 2020 (the “2020 Order”) extending the term of Defendant’s probation. The court found that Defendant violated the terms of his probation by failing to report, failing to make himself available, and failing to make the court-ordered payments. The court also found that the State had demonstrated good cause to extend

Defendant's probation. Accordingly, the court extended Defendant's probation by 12 months, beginning on 15 September 2020.

¶ 5 On 25 June 2021, Defendant's probation officer filed an additional violation report, alleging that Defendant had again violated the conditions of his probation, in that he was \$324.40 in arrears on his court-ordered payments, and he faced pending charges for the offenses of violating a domestic violence protective order and assaulting a female while on probation.

¶ 6 Defendant appeared for his probation revocation hearing in Lee County Superior Court on 23 November 2021. After hearing the evidence and arguments of counsel, the trial court "d[id] not find evidence of assault on a female" and "ma[de] no finding" regarding the allegation that Defendant was in arrears on his required monetary payments; however, the court found that Defendant had committed the new criminal offense of violating a domestic violence protective order during his term of probation. The trial court determined: "[A] violation report was filed while . . . [D]efendant was on probation. Defendant willfully violated probation during the term of his probation. Good cause exists for the revocation of probation, and . . . [D]efendant did commit new criminal conduct while on probation." The trial court thus revoked Defendant's probation and activated his sentence in a judgment entered on 23 November 2021 (the "2021 Judgment").

¶ 7 Defendant gave notice of appeal in open court.

Discussion

¶ 8 Defendant argues on appeal that the trial court lacked subject-matter jurisdiction to revoke his probation in the 2021 Judgment because his probation had been improperly extended by the 2020 Order, and therefore, he was “no longer on probation at the time the probation officer filed” the 25 June 2021 violation report. We disagree.

I. Appellate Jurisdiction

¶ 9 “Unlike an original conviction, a probation extension order is not immediately appealable.” *State v. Hoskins*, 242 N.C. App. 168, 170, 775 S.E.2d 15, 17 (2015). “A defendant may only appeal a probation order that either activates his sentence or places the defendant on special probation.” *Id.* (citation and internal quotation marks omitted); N.C. Gen. Stat. § 15A-1347(a) (2021).

¶ 10 In the 2020 Order, the trial court neither activated Defendant’s sentence nor placed him on special probation; consequently, Defendant “had no mechanism to appeal” the 2020 Order. *Hoskins*, 242 N.C. App. at 170, 775 S.E.2d at 17. He therefore “has not waived [his] right to challenge” the 2020 Order extending his probation. *Id.*

¶ 11 With regard to the 2021 Judgment revoking Defendant’s probation and activating his sentence, Defendant timely gave notice of appeal. Accordingly, this matter is properly before this Court, and we proceed to the merits of Defendant’s appeal. *See, e.g., State v. Guinn*, 281 N.C. App. 446, 2022-NCCOA-36, ¶ 13

(concluding that the defendant did not waive his right to challenge on appeal an order extending his probation where he appealed from the trial court's subsequent judgment revoking his probation and activating his sentence).

II. Standard of Review

¶ 12 Generally, “[t]he trial court’s decision to revoke a defendant’s term of probation pursuant to a valid probation violation report is reviewed for abuse of discretion on appeal.” *State v. Crompton*, 380 N.C. 220, 2022-NCSC-14, ¶ 8. However, this Court reviews de novo “the issue of whether a trial court had subject[-]matter jurisdiction to revoke a defendant’s probation.” *State v. Moore*, 240 N.C. App. 461, 462, 771 S.E.2d 766, 767 (2015). “When conducting de novo review, this Court considers the matter anew and freely substitutes its own judgment for that of the lower tribunal.” *Guinn*, ¶ 15 (citation and internal quotation marks omitted).

¶ 13 “The burden of perfecting the trial court’s jurisdiction for a probation revocation hearing after [a] defendant’s period of probation has expired lies squarely with the State.” *State v. Harwood*, 243 N.C. App. 425, 428, 777 S.E.2d 116, 118 (2015) (citation omitted).

III. Analysis

¶ 14 Before revoking a defendant’s probation, the trial court must “hold a hearing to determine whether to revoke . . . probation and must make findings to support the decision and a summary record of the proceedings.” N.C. Gen. Stat. § 15A-1345(e). “A

proceeding to revoke probation is often regarded as informal or summary, and the court is not bound by strict rules of evidence.” *State v. Faulkner*, 250 N.C. App. 412, 419, 792 S.E.2d 836, 841 (2016) (citation omitted). A trial court may only revoke a defendant’s probation under certain circumstances, N.C. Gen. Stat. § 15A-1344(a), including the defendant’s violation of N.C. Gen. Stat. § 15A-1343(b)(1), which requires as a regular condition of probation that a defendant “[c]ommit no criminal offense in any jurisdiction[,]” *id.* § 15A-1343(b)(1).

¶ 15 “Other than as provided in N.C. Gen. Stat. § 15A-1344(f), a trial court lacks jurisdiction to revoke a defendant’s probation after the expiration of the probationary term.” *Guinn*, ¶ 17 (citation omitted). A trial court may extend, modify, or revoke a defendant’s probation after the probationary period has expired only if all of the following circumstances apply:

- (1) Before the expiration of the period of probation the State has filed a written violation report with the clerk indicating its intent to conduct a hearing on one or more violations of one or more conditions of probation.
- (2) The court finds that the probationer did violate one or more conditions of probation prior to the expiration of the period of probation.
- (3) The court finds for good cause shown and stated that the probation should be extended, modified, or revoked.

N.C. Gen. Stat. § 15A-1344(f)(1)–(3). “If the court opts to extend the period of probation, the court may extend the period of probation up to the maximum allowed under [N.C. Gen. Stat. §] 15A-1342(a).” *Id.* § 15A-1344(f)(4).

¶ 16 In the present case, Defendant specifically challenges the 2020 Order’s 15 September 2020 start date for the 12-month probation extension, contending that the extension period should have instead started “6 June 2020 at the latest[.]” Therefore, according to Defendant, his probation actually expired on 6 June 2021, 12 months from the initial expiration date. As such, Defendant argues, the trial court was “without jurisdiction to revoke [his] probation on 23 November 2021” because the State did not file the 25 June 2021 violation report “[b]efore the expiration of the period of probation” on 6 June 2021. *Id.* § 15A-1344(f)(1). We are not persuaded by Defendant’s argument.

¶ 17 The 2020 Order extending Defendant’s probation after the original expiration of his probationary term is valid because the requirements of § 15A-1344(f) were fully satisfied. The State filed the first violation report on 3 March 2020, approximately three months “[b]efore the expiration of the period of probation” on 6 June 2020. *Id.* The report alleged several probation violations, including Defendant’s failure to make the required monetary payments and failure to report, thus clearly “indicating [the State’s] intent to conduct a hearing on one or more violations of one or more conditions of probation.” *Id.*

¶ 18 After the probation violation hearing, the trial court concluded that Defendant “violate[d] one or more conditions of probation prior to the expiration of the period of probation[,]” *id.* § 15A-1344(f)(2)—namely, that Defendant was \$2,580.00 in arrears on his court-ordered payments, had failed to report, and had failed to make himself available for supervision. Based on these violations, the court further found good cause to extend Defendant’s probation by 12 months, beginning on 15 September 2020. *Id.* § 15A-1344(f)(3). Finally, this modification did not extend Defendant’s probation beyond the maximum allowable term of five years. *See id.* §§ 15A-1344(f)(4), -1342(a).

¶ 19 Although Defendant claims that the trial court had “no statutory authority . . . to extend [Defendant]’s probation from a date after it ha[d] expired[,]” the clear provisions of § 15A-1344(f) belie his claim. Subsection (f)(4) affords a trial court discretion in setting the probation extension period, as long as the defendant’s total probationary term does not exceed the “maximum allowed under [N.C. Gen. Stat. §] 15A-1342(a)[,]” *id.* § 15A-1344(f)(4), which is five years, *id.* § 15A-1342(a). Nothing in the statute mandates that the trial court begin the extension period on the date that the probation initially expired, *see id.* § 15A-1344(f), and we will not impose such a requirement, *see State v. J.C.*, 372 N.C. 203, 208, 827 S.E.2d 280, 283 (2019) (“[W]hen the language of a statute is clear and unambiguous, there is no room for judicial construction and the courts must give the statute its plain and definite

meaning, and are without power to interpolate, or superimpose, provisions and limitations not contained therein.” (citation omitted)). Further, to require the trial court to retroactively set an extension of probation from the date of the initial probation’s expiration would defeat in part the purpose of § 15A-1344(f), which is to provide flexibility in the trial court’s disposition of a defendant’s probation violation after the probationary period has expired. Here, the trial court appropriately exercised its discretion in setting this start date for the extension period.

¶ 20 In that the 2020 Order validly extended Defendant’s probationary term to 15 September 2021, the filing of the second violation report on 25 June 2021, months “[b]efore the expiration of the period of probation[,]” was timely. N.C. Gen. Stat. § 15A-1344(f)(1). And because Defendant remained on probation at the time of the filing of the 25 June 2021 violation report, the trial court had subject-matter jurisdiction to enter the 2021 Judgment revoking Defendant’s probation upon finding that Defendant “violate[d] one or more conditions of probation prior to the expiration of the period of probation[,]” *id.* § 15A-1344(f)(2)—specifically, that he committed the criminal offense of violating a domestic violence protective order while on probation. Defendant’s argument to the contrary is without merit.

Conclusion

¶ 21 For the foregoing reasons, we affirm the judgment revoking Defendant’s probation and activating his sentence.

STATE V. BAKER

2022-NCCOA-762

Opinion of the Court

AFFIRMED.

Judges GORE and JACKSON concur.

Report per Rule 30(e).