

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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

2021-NCCOA-470

No. COA20-468

Filed 7 September 2021

Avery County, No. 18CRS000306, 18CRS050212-15, 18CRS050230

STATE OF NORTH CAROLINA

v.

CODY WAYNE ALLEN, Defendant.

Appeal by Defendant from judgment entered 30 August 2019 by Judge Peter Knight in Avery County Superior Court. Heard in the Court of Appeals 26 May 2021.

*Attorney General Joshua H. Stein, by Special Deputy Attorney General Kari R. Johnson, for the State.*

*Guy J. Loranger for the Defendant.*

DILLON, Judge.

I. Background

¶ 1 Defendant Cody Wayne Allen was tried and found guilty of several crimes. Additionally, the trial court entered civil judgments requiring Defendant to pay \$8,531.25 in attorney fees and expenses and a \$60.00 attorney appointment fee. Defendant appealed from the criminal judgments orally, but he failed to appeal from

the civil judgments properly by failing to provide timely written notice of appeal. *See* N.C. R. App. P. 3(a). Thus, Defendant filed a petition for writ of *certiorari*, appealing the civil judgments.

## II. Analysis

¶ 2 This appeal concerns only the civil judgments. As Defendant has failed to preserve his appeal, he has petitioned our Court to issue a writ of *certiorari*. The State does not oppose this petition. In our discretion, we grant Defendant's petition.

¶ 3 Turning to the merits of Defendant's appeal, Defendant argues that he was not given the opportunity to be heard regarding the civil judgments. Indeed, our Supreme Court has held that it is error for a trial court to enter an award for attorney's fees without notice to the defendant and without providing an opportunity to be heard. *State v. Crews*, 284 N.C. 427, 441-42, 201 S.E.2d 840, 849-50 (1974).

¶ 4 Here, the State concedes that "there is no evidence in the Record establishing that Defendant was provided notice and an opportunity to be heard" as to the civil judgments. We agree and conclude that Defendant is entitled to a new hearing on the matter. Accordingly, we vacate the civil judgments and remand the matter for a hearing, allowing Defendant an opportunity to be heard.

VACATED AND REMANDED.

Judges CARPENTER and GORE concur.

Report per Rule 30(e).