

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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

2022-NCCOA-893

No. COA22-487

Filed 20 December 2022

Rowan County, No. 21 CR 50517

STATE OF NORTH CAROLINA

v.

MICHAEL RAY TRAPP, Defendant.

Appeal by Defendant from amended judgment entered 24 November 2021 by Judge Roy Marshall Bickett, Jr., in Rowan County District Court. Heard in the Court of Appeals 30 November 2022.

Attorney General Joshua H. Stein, by Assistant Attorney General Maria E. Bruner, for the State.

Richard Croutharmel for the Defendant.

JACKSON, Judge.

¶ 1 Michael Ray Trapp (“Defendant”) appeals from amended judgment entered at a resentencing hearing held to correct issues in the sentence imposed upon Defendant after pleading guilty to interfering with an electronic monitoring device.

I. Background

¶ 2 On 19 January 2021, Defendant, who had been released from prison and was

required to wear an electric monitoring device as a condition of his post-release supervision, was picked up by law enforcement. At the time, Defendant had removed the device and was no longer wearing it. The charger for the device along with a cord and one battery were recovered by law enforcement that day. However, the device itself, a battery, and two straps were not.

¶ 3 On or about 9 February 2021, Defendant was charged with interfering with an electronic monitoring device.

¶ 4 On 8 September 2021, Defendant entered an *Alford* plea and stipulated to being a prior record level IV for felony sentencing purposes. The Honorable Roy Marshall Bickett, Jr., accepted Defendant's plea in Rowan County District Court and, pursuant to a plea agreement, sentenced Defendant to 10 to 14 months in prison, which was in the mitigated range for a prior record level IV offender for a Class H felony. Defendant requested Advanced Supervised Release ("ASR") without objection from the State. The written judgment was entered reflecting a felony Class H, prior record level IV judgment of 10 months minimum and 14 months maximum in prison with 127 days of credit for time served. The ASR selection on the judgment form was left blank, yet "Other" was selected with a note stating: "ASR (ADVANCED SUPERVISED RELEASE) RECOMMENDED BY THE COURT."

¶ 5 On 25 October 2021, the Rowan County Clerk of District Court received a document from the North Carolina Department of Public Safety pertaining to

Defendant's case noting that the maximum sentence did not correspond to the minimum sentence imposed. As a result of this error, Judge Bickett conducted a resentencing hearing where Defendant was sentenced in the mitigated range of felony Class H, prior record level IV, to an active punishment of 12 to 24 months in prison. The amended judgment, entered *nunc pro tunc* to 8 September 2021, reflected a felony Class H, prior record level IV judgment of 12 months minimum and 24 months maximum in prison with 127 days of jail credit. Again, the ASR selection on the judgment form was left blank, but unlike the original judgment form, the amended judgment form was also void of any note or recommendation about ASR.

II. Standard of Review

¶ 6 Sentencing errors may be the subject of appellate review even without objection, exception or motion in the trial division when “[t]he sentence imposed was unauthorized at the time imposed, exceeded the maximum authorized by law, was illegally imposed, or is otherwise invalid as a matter of law.” N.C. Gen. Stat. § 15A-1446(d)(18) (2021). “When this Court is confronted with statutory errors regarding sentencing issues, such errors are questions of law, and as such, are reviewed *de novo*.” *State v. Allen*, 249 N.C. App. 376, 379, 790 S.E.2d 588, 591 (2016) (internal marks and citations omitted).

III. Analysis

¶ 7 Defendant argues the trial court erred in failing to mark the ASR selection on

the amended judgment form, which he contends amounts to a clerical error. We agree.

¶ 8

A clerical error is one “resulting from a minor mistake or inadvertence, especially in writing or copying something on the record, and not from judicial reasoning or determination.” *Allen*, 249 N.C. App. 376, 380, 790 S.E.2d 588, 591 (internal marks and citations omitted). Where alleged sentencing errors are clerical in nature, “it is appropriate to remand the case to the trial court for correction[.]” *Id.* at 379, 790 S.E.2d at 591 (internal marks and citations omitted). Correction of clerical errors in the judgments of trial courts is essential “because of the importance that the record speak the truth.” *State v. Smith*, 188 N.C. App. 842, 845, 656 S.E.2d 695, 696 (2008) (cleaned up).

¶ 9

Class H, prior record level IV defendants are eligible for ASR—where the defendant is released from prison and placed on post-release supervision—if sentenced to active time. N.C. Gen. Stat. § 15A-1340.18(a)(1) (2021); *Id.* § 15A-1340.18(a)(2)(e). Further,

[w]hen imposing an active sentence for an eligible defendant, the court, in its discretion and without objection from the prosecutor, may order that the Department of Correction admit the defendant to the ASR program. The Department of Correction shall admit to the ASR program only those defendants for which ASR is ordered in the sentencing judgment.

Id. § 15A-1340.18(c).

In the instant case, Defendant requested ASR stating:

[Defense Counsel]: On his behalf, [Defendant] specifically asks for Advanced Supervised Release. This is for defendants who have plead guilty or found guilty on or after January 1, 2012, that allows a sentencing judge without objection from the Prosecutor to order the Department of Correction to admit an eligible defendant to the ASR program
.....

THE COURT: All right. It says that without objection from the Prosecutor. If the Prosecutor's not objecting, then I will recommend it. Are you objecting?

[Prosecutor]: No, sir.

THE COURT: All right. I'll recommend it. Class H, Level VI, I'll find the mitigating factor that he has a support group in the community. Not less than 10, no more than 14 months. I'll recommend Advanced Supervised Release and a tamper-proof monitor. All right. Thank you, sir.

As the colloquy quoted above demonstrates, the trial court clearly intended to recommend ASR, and while the ASR selection on the written judgment form was left blank, "Other" was selected with a note stating: "ASR (ADVANCED SUPERVISED RELEASE) RECOMMENDED BY THE COURT."

¶ 10 During the resentencing hearing, however, the parties spoke only about changing the initial sentence range from 10 to 14 months in prison to 12 to 24 months

in prison and did not address ASR. Nor was it addressed in the amended judgment entered after the resentencing. The State nevertheless concedes that the failure to address ASR at the hearing or in the amended judgment entered after the resentencing was inadvertent and amounted to clerical error. We therefore remand this case to the trial court to correctly order ASR to make “the record speak the truth.” *Smith*, 188 N.C. App. at 845, 656 S.E.2d at 696.

IV. CONCLUSION

¶ 11 The trial court’s failure to select ASR on the amended judgment form was an inadvertent clerical error made when the order was reduced to writing. We therefore remand for correction of this clerical error.

REMANDED FOR CORRECTION OF CLERICAL ERROR.

Judges ARROWOOD and COLLINS concur.

Report per Rule 30(e).