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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-1058

Filed 7 May 2024

Brunswick County, Nos. 20 CRS 52906, 54860; 22 CRS 918–922

STATE OF NORTH CAROLINA

v.

CHESTER BURTON GRICE, Defendant.

Appeal by Defendant from judgment entered 23 April 2023 by Judge Jason C. Disbrow in Brunswick County Superior Court. Heard in the Court of Appeals 20 March 2024.

*Attorney General Joshua H. Stein, by Associate Attorney General Justin Michael Bradley, for the State.*

*Appellate Defender Glenn Gerding, by Assistant Appellate Defender Emily Holmes Davis, for Defendant-Appellant.*

CARPENTER, Judge.

Chester Burton Grice (“Defendant”) appeals from the trial court’s judgment revoking his probation. On appeal, Defendant argues the trial court made a clerical error in the judgment. After careful review, we agree and remand for the trial court to correct the clerical error.

**I. Factual & Procedural Background**

On 12 May 2022, Defendant pleaded guilty to four counts of obtaining property by false pretense, and the trial court imposed two consecutive consolidated terms of between eleven and twenty-three months of imprisonment. The trial court suspended both judgments and placed Defendant on thirty-six months of probation.

On 13 May 2022, Defendant pleaded guilty to eight counts of obtaining property by false pretense and two counts of failure to work after getting paid. The trial court imposed three consecutive consolidated terms of between eleven and twenty-three months of imprisonment. The trial court suspended all three judgments and again placed Defendant on thirty-six months of probation.

On 8 June 2022, Defendant pleaded guilty to two counts of obtaining property by false pretense, and the trial court imposed two consecutive terms of between ten and twenty-one months of imprisonment. The trial court suspended both judgments and placed Defendant on twenty-four months of probation.

Later in 2022, Defendant's probation officer filed two probation-violation reports, one on 2 September 2022 and another on 15 December 2022, each stating that Defendant willfully violated the conditions of his probation.

The trial court revoked Defendant's probation in all cases at the 17 April 2023 criminal session of Brunswick County Superior Court. In its written judgment revoking probation, the trial court stated that it found probation violations in the first and second paragraphs of the 2 September violation report. The trial court, however,

did not find that Defendant had obtained property by false pretense, as described in the second paragraph of the 2 September violation report. Rather, concerning the second probation violation, the trial court found that Defendant had possessed oxycodone without a prescription, as described in the fourth paragraph of the 15 December violation report.

Defendant, acting pro se, filed written notice of appeal on 20 April 2023. Defendant's notice of appeal failed to identify all judgments being appealed and failed to indicate that notice was served on the State. On 8 December 2023, Defendant filed a petition for writ of certiorari ("PWC").

## **II. Jurisdiction**

We lack jurisdiction over cases where the appellant fails to follow Rule 4 of our Rules of Appellate Procedure. *See State v. Hammonds*, 218 N.C. App. 158, 162, 720 S.E.2d 820, 823 (2012) (citing *Dogwood Dev. & Mgmt. Co. v. White Oak Transp. Co.*, 362 N.C. 191, 197, 657 S.E.2d 361, 365 (2008)). Under Rule 4, a written notice of appeal must "designate the judgment or order from which appeal is taken" and be served on "all adverse parties." N.C. R. App. P. 4(a)–(c).

Here, Defendant concedes that his notice of appeal failed to identify all judgments being appealed and failed to show that notice was served on the State. Therefore, Defendant failed to follow Rule 4, *see id.*, so we lack jurisdiction, *see Hammonds*, 218 N.C. App. at 162, 720 S.E.2d at 823. Defendant, however, filed a PWC, and we grant his petition.

### III. Issue

The issue on appeal is whether the trial court made a clerical error in its judgment revoking Defendant's probation.

### IV. Analysis

We review clerical errors de novo. *See State v. Hauser*, 271 N.C. App. 496, 503, 844 S.E.2d 319, 325 (2020). Under a de novo review, this 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) (quoting *In re Greens of Pine Glen, Ltd. P’ship*, 356 N.C. 642, 647, 576 S.E.2d 316, 319 (2003)).

A clerical error is a minor error that does not alter the court's reasoning. *State v. Jarman*, 140 N.C. App. 198, 202, 535 S.E.2d 875, 878 (2000). “When, on appeal, a clerical error is discovered in the trial court's judgment or order, it is appropriate to remand the case to the trial court for correction because of the importance that the record ‘speak the truth.’” *State v. Smith*, 188 N.C. App. 842, 845, 656 S.E.2d 695, 696–97 (2008) (quoting *State v. Linemann*, 135 N.C. App. 734, 738, 522 S.E.2d 781, 784 (1999)).

Here, Defendant argues that the trial court made a clerical error in the judgment revoking his probation. Specifically, Defendant asserts the trial court erred by stating that Defendant's second probation violation was described in the second paragraph of the 2 September violation report. Instead, the judgment should state that Defendant's second probation violation was described in the fourth paragraph of

STATE V. GRICE

*Opinion of the Court*

the 15 December violation report. So correctly stated, Defendant's judgment should reflect that his probation violations are described in the first paragraph of the 2 September violation report and the fourth paragraph of the 15 December violation report. The State agrees with Defendant, and so do we. Accordingly, we remand for the trial court to correct Defendant's judgment. *See Smith*, 188 N.C. App. at 845, 656 S.E.2d at 696–97.

**V. Conclusion**

We conclude that the trial court made a clerical error, so we remand for the trial court to correct the error.

REMANDED.

Judges TYSON and STADING concur.

Report per Rule 30(e).