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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-1202

Filed: 17 October 2017

Pender County, Nos. 15 CRS 1298-99

STATE OF NORTH CAROLINA

v.

WILLIAM ZACHARY HURLEY¹

Appeal by defendant from judgments entered 6 May 2016 by Judge Phyllis M. Gorham in Pender County Superior Court. Heard in the Court of Appeals 9 August 2017.

Attorney General Joshua H. Stein, by Assistant Attorney General Colin A. Justice, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Hannah H. Love, for defendant-appellant.

DAVIS, Judge.

William Zachary Hurley (“Defendant”) appeals from the trial court’s judgments revoking his probation and activating his suspended sentences. On

¹ Although Defendant’s birth name is William Zachary Hurley, his adoptive name is William Zachary Burton. We observe that one of the judgments from which Defendant is appealing lists his last name as “Burton.”

appeal, he argues that the trial court erred by (1) finding that he had willfully absconded from his probation supervision in violation of N.C. Gen. Stat. § 15A-1343(b)(3a); and (2) imposing civil judgments against him without affording him with notice and an opportunity to be heard. After careful review, we affirm the trial court's judgments revoking Defendant's probation, vacate the civil judgments for attorneys' fees, and remand for the correction of a clerical error.

Factual and Procedural Background

On 15 June 2015, Defendant pled guilty to assault on a female and was sentenced to 75 days imprisonment. The sentence was suspended, and Defendant was placed on supervised probation for 24 months. On 8 September 2015, Defendant pled guilty to assault with a deadly weapon inflicting serious injury and was sentenced to 29 to 47 months imprisonment. The sentence was suspended, and Defendant was placed on supervised probation for 60 months.

On 29 October 2015, two probation violation reports were filed by Defendant's probation officer in Pender County. The 29 October 2015 reports stated that Defendant had violated a condition of his probation by absconding, failing to report to his supervising officer as directed, and being in arrears towards his court indebtedness. On 19 January 2016, two additional probation violation reports were filed, alleging that Defendant had absconded. Both sets of violation reports stated

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that Defendant's probation officer was unaware of his whereabouts because Defendant was no longer living at his listed residences.

On 19 April 2016, a hearing was held on the 29 October 2015 and 19 January 2016 probation violation reports before the Honorable Lindsey M. Luther in Pender County District Court. Judge Luther found that Defendant had violated his probation by absconding in violation of N.C. Gen. Stat. § 15A-1343(b)(3a). She revoked Defendant's probation and activated his sentence.

Defendant appealed this order to superior court. On 6 May 2016, a hearing was held before the Honorable Phyllis M. Gorham in Pender County Superior Court. By order entered that same day, the court found that Defendant had violated his probation by absconding, revoked his probation, and activated his sentences. Defendant filed a notice of appeal.

Analysis

On appeal, Defendant argues that the trial court erred by (1) finding he willfully absconded in violation of N.C. Gen. Stat. § 15A-1343(b)(3a); and (2) imposing two civil judgments for attorneys' fees without first affording him notice and an opportunity to be heard.

I. Appellate Jurisdiction

As an initial matter, we must address the issue of whether appellate jurisdiction exists over Defendant's appeal. Rule 4 of the North Carolina Rules of

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Appellate Procedure requires that the notice of appeal “designate the judgment or order from which appeal is taken and the court to which appeal is taken[.]” N.C. R. App. P. 4(b). Rule 4 also requires service of the notice of appeal as provided by Rule 26, which requires that “[c]opies of all papers filed by any party and not required by these rules to be served by the clerk shall, at or before the time of filing, be served on all other parties to the appeal.” N.C. R. App. P. 4(c); N.C. R. App. P. 26(b).

Here, the record shows that Defendant’s trial counsel filed a notice of appeal on 17 May 2016. However, this document failed to designate the judgments from which the appeal was being taken or assert that the appeal was taken to this Court. Moreover, the certificate of service did not state the date on which the State was served with the notice of appeal. Defendant acknowledges that he has lost his right to prosecute his appeal due to his trial counsel’s failure to give notice of appeal in compliance with the Rules of Appellate Procedure.

However, Defendant has filed a petition for writ of *certiorari* requesting that this Court consider his appeal. Pursuant to Rule 21(a)(1) of the Rules of Appellate Procedure, this Court may, in its discretion, grant a petition for writ of *certiorari* and review an order or judgment entered by the trial court “when the right to prosecute an appeal has been lost by failure to take timely action.” N.C. R. App. P. 21(a)(1). Here, Defendant lost his right to appeal through no fault of his own but rather due to his trial counsel’s failure to give proper notice of appeal. Thus, we exercise our

discretion to grant Defendant's petition for writ of *certiorari* and proceed to address the merits of his arguments.

II. Probation Revocation

Defendant argues that the trial court erred by revoking his probation because the allegations in the 29 October 2015 and 19 January 2016 probation violation reports were insufficient to support the court's finding that he willfully absconded. In its 6 May 2016 order revoking Defendant's probation, the trial court incorporated the allegations made in the probation violation reports as findings of fact. The 29 October 2015 violation report stated, in pertinent part, as follows:

Of the conditions of probation imposed in that judgment, the defendant has willfully violated:

1. Regular Condition of Probation: "Not to abscond, by willfully avoiding supervision or by willfully making the supervisee's whereabouts unknown to the supervising probation officer" in that, ON OR ABOUT OCTOBER 29, 2015 THE DEFENDANT LEFT HIS PLACE OF RESIDENCE AT (2030 HWY 53W BURGAW, NORTH CAROLINA) WITHOUT PRIOR APPROVAL [O]R KNOWLEDGE OF HIS PROBATION OFFICER AND FAILED TO MAKE HIS WHEREABOUTS KNOWN, MAKING HIMSELF UNAVAILABLE FOR SUPERVISION AND THEREBY ABSCONDING SUPERVISION. AS OF THE DATE OF THIS REPORT, THE DEFENDANT'S W[H]EREABOUTS ARE UNKNOWN AND ALL EFFORTS TO LOCATE THE DEFENDANT HAVE BEEN UNSUCCESSFUL. ON OCTOBER 27, 2015 PROBATION OFFICER ATTEMPTED A HOME CONTACT, HOUSEHOLD MEMBERS STATED THAT OFFENDER HAD NOT BEEN AT RESIDENCE FOR ABOUT A WEEK.

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2. "Report as directed by the Court, Commission or the supervising officer to the officer at reasonable times and places . . ." in that THE DEFENDANT FAILED TO REPORT TO HIS SUPERVISING OFFICER AS DIRECTED ON OCTOBER 29, 2015.
3. Condition of Probation "The defendant shall pay to the Clerk of Superior- Court the "Total Amount Due" as directed by the Court or probation officer" in that AS OF THE DATE OF THIS REPORT THE DEFENDANT IS \$160.00 IN ARREARS TOWARDS HIS COURT INDEBTEDNESS.

The 19 January 2016 report stated, in pertinent part, as follows:

1. Regular Condition of Probation: "Not to abscond, by willfully avoiding supervision or by willfully making the supervisee's whereabouts unknown to the supervising probation officer" in that, ON JANUARY 8, 2016 THE DEFENDANT WAS CALLED AND FAILED IN PENDER COUNTY SUPERIOR COURT FOR ABSCONDING PROBATION VIOLATION. ON OR ABOUT JANUARY 14, 2016 THE DEFENDANT LEFT HIS PLACE OF "RESIDENCE AT 2829 GRAHAM STREET WILMINGTON NC 28412 WITHOUT PRIOR APPROVAL OR KNOWLEDGE OF HIS PROBATION OFFICER AND FAILED TO MAKE HIS WHEREABOUTS KNOWN, MAKING HIM UNAVAILABLE FOR SUPERVISION AND THEREBY ABSCONDING SUPERVISION. AS OF THE DATE OF THIS REPORT, THE DEFENDANT'S WHEREABOUTS ARE UNKNOWN AND ALL EFFORTS TO LOCATE DEFENDANT HAVE BEEN UNSUCCESSFUL.

The trial court then made the following pertinent findings of fact:

3. The condition(s) violated and the facts of each violation are as set forth . . .

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- a. in Paragraph(s) 1-3 of the Violation Report or Notice dated 10/29/2015.
 - b. in Paragraph(s) 1 of the Violation Report or Notice dated 01/19/2016.
4. Each of the conditions violated as set forth above is valid; the defendant violated each condition willfully and without valid excuse; and each violation occurred at a time prior to the expiration or termination of the period of the defendant's probation.

Each violation is, in and of itself, a sufficient basis upon which this Court should revoke probation and activate the suspended sentence.

5. . . . The Court may revoke defendant's probation . . .
- a. for the willful violation of the condition(s) that he/she not commit any criminal offense, G.S. 15A-1343(b)(1), or abscond from supervision, G.S. 15A-1343(b)(3a), as set out above.

Defendant argues that the evidence presented by the State did not support the trial court's findings of fact. Specifically, he argues that (1) the State presented no evidence to support the allegations contained in paragraphs 2 and 3 in the 29 October 2015 report and paragraph 1 in the 19 January 2016 report (which the trial court incorporated into its findings of fact); and (2) the trial court's finding incorporating paragraph 1 of the 29 October 2015 report did not support the court's conclusion that Defendant willfully absconded in violation of N.C. Gen. Stat. § 15A-1343(b)(3a). We address each argument in turn.

A. Clerical Errors

Defendant argues that the trial court erred in incorporating the allegations made in paragraphs 2 and 3 of the 29 October 2015 probation violation report and paragraph 1 of the 19 January 2016 report. Specifically, he contends that at the beginning of the probation hearing the State informed the court that it would take a dismissal of these alleged violations and proceeded to present no evidence regarding these allegations. Thus, Defendant argues that the trial court's incorporation of these paragraphs is a clerical error.

“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. Lark*, 198 N.C. App. 82, 95, 678 S.E.2d 693, 702 (2009) (citation and quotation marks omitted), *disc. review denied*, 363 N.C. 808, 692 S.E.2d 111 (2010). A clerical error is “an error resulting from a minor mistake or inadvertence, especially in writing or copying something on the record, and not from judicial reasoning or determination.” *Id.* (citation, quotation marks, and brackets omitted).

At the probation hearing, the following exchange occurred:

[PROSECUTOR:] . . . As of the date of this report, which is the *29th of October*, the defendant's whereabouts are unknown and all efforts to locate the defendant have been unsuccessful. On October 27, 2015, the probation officer attempted to contact -- strike that, attempted to conduct a home contact. A house member stated the

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defendant had not been there for about a week, thereby again absconding.

Does he admit or deny that?

[DEFENDANT'S COUNSEL]: He admits that.

[PROSECUTOR]: *Judge, the State in [15 CRS 1299] will take a dismissal on all remaining alleged violations.*

Then a misdemeanor probation violation was appealed up from District Court up to Superior Court *in 15 CRS 1298* with the same allegation of absconding.

Does he admit or deny that?

[DEFENDANT'S COUNSEL]: Admits that.

[PROSECUTOR]: *The State would take a dismissal on all other violations held in that report. Judge, the State is seeking revocation.*

(Emphasis added.)

Although the State gave notice of its intent to dismiss the remaining allegations in the 29 October 2015 reports, it made no similar statement with regard to the allegations in the 19 January 2016 reports. During the remainder of the probation hearing, the State only presented evidence regarding the allegations of absconding — making reference only to the facts alleged in paragraph 1 of the 29 October 2015 and paragraph 1 of the 19 January 2016 reports. Thus, we remand to allow the trial court to correct the clerical error that exists as a result of its incorporation of paragraphs 2 and 3 of the 29 October 2015 violation report into its order revoking Defendant's probation. *See State v. Jones*, 225 N.C. App. 181, 188,

736 S.E.2d 634, 639 (2013) (remanding for trial court to correct clerical error in findings of fact in order revoking defendant's probation).

B. Absconding Violation

We next turn to the question of whether the remaining findings supported the trial court's order to revoke Defendant's probation based on its conclusion that he violated N.C. Gen. Stat. § 15A-1343(b)(3a) by willfully absconding. "We review the revocation of probation for an abuse of discretion." *State v. Miller*, 205 N.C. App. 291, 293, 695 S.E.2d 149, 150 (2010) (citation omitted). Under an abuse of discretion standard, "we review to determine whether a decision is manifestly unsupported by reason, or so arbitrary that it could not have been the result of a reasoned decision." *Brewer v. Hunter*, 236 N.C. App. 1, 8, 762 S.E.2d 654, 658 (citation and quotation marks omitted), *disc. review dismissed*, 367 N.C. 800, 766 S.E.2d 679 (2014).

"[A] proceeding to revoke probation is not a criminal prosecution and is often regarded as informal or summary." *State v. Murchison*, 367 N.C. 461, 464, 758 S.E.2d 356, 358 (2014) (citation and quotation marks omitted). "Thus, the alleged violation of a valid condition of probation need not be proven beyond a reasonable doubt." *Id.* (citation and quotation marks omitted). "Instead, all that is required in a hearing of this character 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." *Id.* (citation, quotation marks, and brackets omitted).

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Defendant argues that as a matter of law the State's evidence was insufficient to support the conclusion that he violated N.C. Gen. Stat. § 15A-1343(b)(3a). Specifically, he contends that the evidence merely supported a conclusion that he violated subsections (b)(2) or (b)(3) and that such violations would not be sufficient to revoke his probation.

N.C. Gen. Stat. § 15A-1343(b) states, in pertinent part, as follows:

(b) Regular Conditions. -- As regular conditions of probation, a defendant must:

. . . .

- (2) Remain within the jurisdiction of the court unless granted written permission to leave by the court or his probation officer.
- (3) Report as directed by the court or his probation officer to the officer at reasonable times and places and in a reasonable manner, permit the officer to visit him at reasonable times, answer all reasonable inquiries by the officer and obtain prior approval from the officer for, and notify the officer of, any change in address or employment.
- (3a) Not abscond by willfully avoiding supervision or by willfully making the defendant's whereabouts unknown to the supervising probation officer, if the defendant is placed on supervised probation.

N.C. Gen. Stat. § 15A-1343(b) (2015).

The Justice Reinvestment Act of 2011 ("the JRA") amended this subsection to provide that a trial court may revoke

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probation and activate the suspended sentence *only* if a defendant: (1) commits a new criminal offense in violation of N.C. Gen. Stat. § 15A-1343(b)(1); (2) absconds supervision in violation of N.C. Gen. Stat. § 15A-1343(b)(3a); or (3) violates a condition of probation after serving two prior periods of confinement in response to violations under N.C. Gen. Stat. § 15A-1344(d2). For all other probation violations, the trial court may modify the terms and conditions of probation or impose a ninety-day period of confinement in response to a violation.

State v. Johnson, __ N.C. App. __, __, 782 S.E.2d 549, 552-53 (2016) (internal citations omitted).

In support of his argument that the court's findings did not support a violation of subsection (b)(3a), Defendant relies primarily on *State v. Williams*, __ N.C. App. __, 776 S.E.2d 741 (2015), and *State v. Johnson*, __ N.C. App. __, 783 S.E.2d 21 (2016). In *Williams*, the trial court revoked the defendant's probation based on allegations of absconding in violation of § 15A-1343(b)(3a). At the probation hearing, the State argued that the defendant had absconded based on evidence that he had missed multiple scheduled appointments with his supervisor, had been traveling back and forth between North Carolina and New Jersey without permission from his supervisor, and had never lived at his reported address. *Williams*, __ N.C. App. at __, 776 S.E.2d at 742. The State also presented evidence that although the defendant had failed to attend three scheduled appointments, he answered the phone when the probation officer called him after failing to show up for these appointments. *Id.* at __, 776 S.E.2d at 742.

On appeal, this Court reversed the trial court's revocation of the defendant's probation, stating as follows:

We hold that the evidence in this case does not support finding a violation of N.C. Gen. Stat. § 15A-1343(b)(3a). The evidence was clearly sufficient to find violations of N.C. Gen. Stat. §§ 15A-1343(b)(2) and (3), and Defendant does not contest that portion of the judgment finding he violated those conditions. However, N.C. Gen. Stat. § 15A-1344(a) does not authorize revocation based upon violations of those conditions, unless the requirements of N.C. Gen. Stat. § 15A-1344(a)(d2) [sic] have been met, which is not the situation in the case before us.

Id. at __, 776 S.E.2d at 746.

In *Johnson*, the defendant — who was placed on house arrest with electronic monitoring — informed his probation officer that he would be unable to attend their scheduled meeting because he did not have a car and could not find a ride to the meeting place. *Johnson*, __ N.C. App. at __, 783 S.E.2d at 23. He asked whether the officer could reschedule the appointment, but the officer denied his request. *Id.* at __, 783 S.E.2d at 23. The officer filed probation violation reports alleging that the defendant had left his house without permission in violation of his house arrest and had absconded by not attending the appointment. At the hearing, the officer testified that the defendant's locations and movements were tracked at all times due to the electronic monitoring. *Id.* at __, 783 S.E.2d at 23. The trial court found that the defendant “willfully and without valid excuse” committed the violations in the

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officer's report and revoked the defendant's probation upon finding a violation of N.C. Gen. Stat. § 15A-1343(b)(3a). *Id.* at ___, 783 S.E.2d at 25.

On appeal, we reversed the trial court's order, determining that although the defendant's actions may have violated subsection (b)(3), they did not violate subsection (b)(3a). Thus, we held that the trial court abused its discretion because these "*exact actions* violate the explicit language of a wholly separate regular condition of probation which does not allow for revocation and activation of a suspended sentence." *Id.* at ___, 783 S.E.2d at 26. In so holding, we stated that

[t]o hold otherwise would render portions of N.C. Gen. Stat. § 15A-1344(a) superfluous. Allowing actions which explicitly violate a regular or special condition of probation other than those found in N.C. Gen. Stat. § 15A-1343(b)(1) or N.C. Gen. Stat. § 15A-1343(b)(3a) to also serve, without the State showing more, as a violation of N.C. Gen. Stat. § 15A-1343(b)(1) or N.C. Gen. Stat. § 15A-1343(b)(3a) would result in revocation of probation without following the mechanism the General Assembly expressly provided in N.C. Gen. Stat. § 15A-1344(d2). Such a result would render portions of the statutory language in N.C. Gen. Stat. § 15A-1344(a) wholly duplicative and superfluous. Under a contrary interpretation of the statutory language, there would have been no reason for the General Assembly to specifically list any statutes in N.C. Gen. Stat. § 15A-1344(a), or to enact N.C. Gen. Stat. § 15A-1344(d2) to limit the circumstances for which a court may revoke probation and activate a suspended sentence.

Id. at ___, 783 S.E.2d at 26.

We recently distinguished *Williams* and *Johnson* in *State v. Trent*, __ N.C. App. ___, 803 S.E.2d 224 (filed August 1, 2017) (No. COA16-839). In that case, the

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defendant left his residence with his wife's car and bank card and never returned to the residence. He did not notify his probation officer of a change in address or appear for a scheduled appointment with the officer. Approximately two weeks later, his probation officer learned the defendant had been arrested. *Id.* at __, 803 S.E.2d at __, slip op. at 3-4. At his probation hearing, the defendant "admitted that despite knowing that [the probation officer] had visited his residence while he was away, he did not contact her at any time after he returned" *Id.* at __, 803 S.E.2d at __, slip op. at 4. The trial court found that the State had proved that the defendant had absconded. *Id.* at __, 803 S.E.2d at __, slip op. at 4.

On appeal, this Court affirmed the trial court's order. We stated that the probation officer "did not have the benefit of tracking defendant's movements via electronic monitoring device" as was the case in *Johnson* and had "absolutely no means of contacting defendant during his unauthorized trip" unlike the phone conversations that took place in *Williams*. *Id.* at __, 803 S.E.2d at __, slip op. at 14 (internal citations omitted). We further stated as follows:

Despite the fact that he did not have a phone, it was defendant's responsibility to keep his probation officer apprised of his whereabouts. During defendant's testimony, he never explained how he tried to borrow anyone else's phone in order to let [his probation officer] know that he was working. Indeed, defendant admitted that he made no attempt to contact [his probation officer]. He never contacted her before he left home, while he was [out of town], or after he returned . . . on 6 or 7 May 2016. Even after learning about [the probation officer]'s

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unscheduled visits during his travels, defendant still did not contact her to correct any allegedly inaccurate information that [his wife] may have communicated. Instead, defendant claimed that he went to stay at his mother's house "for a couple days" until he was arrested in Greensboro on 9 May 2016.

Id. at ___, 803 S.E.2d at ___, slip op. at 17. Based on the defendant's actions, we held that "the trial court did not abuse its discretion in finding that defendant willfully absconded from supervision, or in revoking his probation on that basis." *Id.* at ___, 803 S.E.2d at ___, slip op. at 18 (citation omitted).

In the present case, Defendant left his father's house in Pender County in October 2015 without informing his probation officer of his new residence in New Hanover County. On 27 October 2015, his probation officer attempted to conduct a home contact but was informed by a family member that Defendant had not been living there "for about a week." As a result, his probation officer filed the 29 October 2015 violation reports. Defendant eventually informed the probation officer of his new address, but on or about 14 January 2016 he left this new residence without telling his probation officer, resulting in the filing of the 19 January 2016 probation reports. In February 2016, he was arrested in New Hanover County for possession of heroin.

We believe the facts of the present case are analogous to those in *Trent*. Defendant moved out of two residences without informing his probation officer, leaving the officer unapprised as to his whereabouts for weeks at a time. Moreover,

the record is devoid of any indication that Defendant kept in contact with his probation officer after leaving his residences. Thus, the trial court did not abuse its discretion in finding that Defendant had violated N.C. Gen. Stat. § 15A-1343(b)(3a) and in revoking his probation. Accordingly, we affirm the portions of the trial court's orders revoking Defendant's probation and activating his sentences.

III. Civil Judgments

Defendant's final argument on appeal is that the trial court erred by ordering him to pay attorneys' fees without first being afforded an opportunity to be heard. We agree.

N.C. Gen. Stat. § 7A-455 permits the trial court to enter a civil judgment against a defendant following his conviction in the amount of the fees incurred by the defendant's appointed trial counsel. N.C. Gen. Stat. § 7A-455 (2015); *see State v. Jacobs*, 172 N.C. App. 220, 235, 616 S.E.2d 306, 316 (2005) ("N.C. Gen. Stat. § 7A-455 . . . provides that the trial court may enter a civil judgment against a convicted indigent defendant for the amount of fees incurred by the defendant's court-appointed attorney.").

In *Jacobs*, we held that where the defendant was not afforded an opportunity to be heard on the issue of attorneys' fees prior to the entry of a civil judgment against him, the judgment had to be vacated without prejudice to the State's right to

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subsequently apply for such relief pursuant to N.C. Gen. Stat. § 7A-455. *Id.* at 235, 616 S.E.2d at 316. We discussed our prior caselaw on this issue as follows:

In *State v. Crews*, 284 N.C. 427, 201 S.E.2d 840 (1974), our Supreme Court noted that there was no evidence in the record supporting or negating the defendant's contention that a judgment imposing attorney's fees was entered without notice or opportunity for him to be heard. Accordingly, the Court vacated the judgment "without prejudice to the State's right to apply for a judgment in accordance with G.S. 7A-455 after due notice to defendant and a hearing[.]" Similarly, in *State v. Stafford*, 45 N.C. App. 297, 300, 262 S.E.2d 695, 697 (1980), this Court vacated a civil judgment imposing attorney's fees on the defendant where, notwithstanding a signed affidavit of indigency, there was "no indication [in the record] that [the] defendant received any opportunity to be heard on the matter" of attorney's fees.

Id. (internal citations omitted). We therefore determined that based on the facts in *Jacobs* the defendant had been deprived of an opportunity to be heard, stating the following:

This exchange clearly demonstrates that defendant was given notice of the trial court's intention to impose attorney's fees upon him. However, while the transcript reveals that attorney's fees were discussed following defendant's conviction, there is no indication in the record that defendant was notified of and given an opportunity to be heard regarding the appointed attorney's total hours or the total amount of fees imposed.

Id. at 236, 616 S.E.2d at 317.

In the present case, the following exchange occurred at the close of Defendant's hearing concerning attorney's fees:

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THE COURT: . . . How many hours do you have [defense counsel]?

[DEFENDANT'S COUNSEL]: Five and a half.

THE COURT: The Court orders \$330 in attorney fees to be a civil judgment. The Court does waive any probation supervision fees and the Court orders all costs be a civil judgment.

That's the judgment.

[PROSECUTOR.]: Thank you, Your Honor.

Here — as in *Jacobs* — although Defendant was informed that a civil judgment was being awarded against him, the trial court did not provide him with an opportunity to be heard on the matter. At the close of the hearing, the court entered a civil judgment against Defendant in the amount of \$334.50. One week later, the court entered a second civil judgment in the amount of \$120.00. The record is devoid of any indication that Defendant was ever given notice prior to the entry of this second civil judgment.

Therefore, the entry of these civil judgments constituted error. Accordingly, we vacate the trial court's civil judgments without prejudice to the State's right to reapply for such relief in conformity with N.C. Gen. Stat. § 7A-455.

Conclusion

For the reasons stated above, we (1) affirm the portions of the trial court's 6 May 2016 orders revoking Defendant's probation and activating his sentences; (2)

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remand for the correction of the above-referenced clerical error; and (3) vacate the civil judgments entered against him.

AFFIRMED IN PART; VACATED IN PART; REMANDED WITH INSTRUCTIONS.

Judges HUNTER, JR. and MURPHY concur.

Report per Rule 30(e).