

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-277

Filed: 17 September 2019

Wake County, No. 17 JB 488

IN THE MATTER OF: E.A.

Appeal by respondent-juvenile from order entered 12 October 2018 by Judge Robert Rader in Wake County District Court. Heard in the Court of Appeals 5 September 2019.

Attorney General Joshua H. Stein, by Assistant Attorney General Janelle E. Varley, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Amanda S. Hitchcock, for respondent-appellant juvenile.

ZACHARY, Judge.

Respondent-juvenile “Evan”¹ appeals from a disposition and commitment order adjudicating him to be a Level 2 delinquent juvenile. Evan argues on appeal that, after being presented with evidence that he was mentally ill, the trial court erred by failing to refer him to the area mental health services director. After careful review, we vacate the disposition and commitment order and remand to the trial court for a referral to the area mental health services director.

Background

¹ We employ a pseudonym to protect the identity of Respondent, a minor.

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The relevant facts are few. Between 14 December 2017 and 5 January 2018, a Wake County juvenile court counselor approved a petition alleging that Evan (1) committed an assault with a deadly weapon with intent to kill; (2) possessed stolen property; and (3) committed malicious conduct upon a government official by spitting on him. Evan admitted to the charges of assault with a deadly weapon with intent to kill and malicious conduct, and the State dismissed the charge of possession of stolen property. The Honorable Craig Croom adjudicated Evan as delinquent, entered a Level 2 disposition, and ordered twelve months' probation. One month later, a juvenile court counselor filed a motion for review, alleging that Evan violated his probation. On 9 October 2018, the motion for review came on for hearing before the Honorable Robert Rader in Wake County District Court. Judge Rader found Evan in willful violation of his probation, revoked his probation, and ordered that Evan be committed to a youth development center with the Division of Adult Correction and Juvenile Justice for an indefinite period, to end no later than Evan's eighteenth birthday.

Grounds for Appellate Review

Preliminarily, we address our jurisdiction to consider the merits of Evan's appeal. Evan filed written notice of appeal on 10 October 2018. Typed into the trial court's order at the bottom of the page is the date "10/9/2018." However, the order is

additionally—and quite noticeably—stamped with “2018 OCT 12 A 11:07,” indicating that the order was filed *after* Evan filed his notice of appeal on 10 October.

Before a party may file notice of appeal, there must first be an entry of judgment. *See* N.C. Gen. Stat. § 1A-1, Rule 58 (2017) (“[A] judgment is entered when it is reduced to writing, signed by the judge, and filed with the clerk of court pursuant to Rule 5.”). “When a defendant has not properly given notice of appeal, this Court is without jurisdiction to hear the appeal.” *See State v. Webber*, 190 N.C. App. 649, 651, 660 S.E.2d 621, 622 (2008) (quotation marks omitted). Consequently, Evan would need to request—and we would need to issue—a writ of certiorari to have his case reviewed. *See* N.C.R. App. P. 21(a). No petition for writ of certiorari was ever filed. However, this Court has the discretionary authority, pursuant to Appellate Rule 21, to “treat the purported appeal as a petition for writ of certiorari and grant it in our discretion.” *Luther v. Seawell*, 191 N.C. App. 139, 142, 662 S.E.2d 1, 3 (2008).

For reasons more fully explained below, we find the facts of Evan’s case worthy of treating his brief as a petition for writ of certiorari. We also note that the State has not raised this jurisdictional issue in its brief, and we do not contemplate any resulting prejudice to the State. Thus, in our discretion, we invoke this Court’s authority pursuant to our caselaw and Appellate Rule 21, and proceed to the merits of Evan’s appeal.

Discussion

Opinion of the Court

Evan argues on appeal that the trial court erred by failing to refer him to the area mental health services director, after being presented with evidence that Evan was mentally ill. We agree.²

Prior to disposition in a juvenile delinquency action, “the court may order that the juvenile be examined by a physician, psychiatrist, psychologist, or other qualified expert as may be needed for the court to determine the needs of the juvenile.” N.C. Gen. Stat. § 7B-2502(a) (2017). When presented with evidence that the juvenile is mentally ill, the trial court is required to take further action:

If the court believes, or if there is evidence presented to the effect that the juvenile is mentally ill or is developmentally disabled, the court shall refer the juvenile to the area mental health, developmental disabilities, and substance abuse services director for appropriate action. A juvenile shall not be committed directly to a State hospital or mental retardation center; and orders purporting to commit a juvenile directly to a State hospital or mental retardation center except for an examination to determine capacity to proceed shall be void and of no effect. The area mental health, developmental disabilities, and substance abuse director shall be responsible for arranging an interdisciplinary evaluation of the juvenile and mobilizing resources to meet the juvenile’s needs. If institutionalization is determined to be the best service for the juvenile, admission shall be with the voluntary consent of the parent, guardian, or custodian. If the parent, guardian, or custodian refuses to consent to a mental hospital or retardation center admission after such institutionalization is recommended by the area mental health, developmental disabilities, and substance abuse director, the signature and consent of the court may be

² Because the trial court’s failure to refer Evan to the area mental health services director is dispositive, we need not address his remaining arguments on appeal.

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substituted for that purpose. In all cases in which a regional mental hospital refuses admission to a juvenile referred for admission by the court and an area mental health, developmental disabilities, and substance abuse director or discharges a juvenile previously admitted on court referral prior to completion of the juvenile's treatment, the hospital shall submit to the court a written report setting out the reasons for denial of admission or discharge and setting out the juvenile's diagnosis, indications of mental illness, indications of need for treatment, and a statement as to the location of any facility known to have a treatment program for the juvenile in question.

Id. § 7B-2502(c). Notwithstanding a party's failure to object at trial, the trial court's violation of a statutory mandate is reversible error, reviewed *de novo* on appeal. *In re E.M.*, ___ N.C. App. ___, ___, 823 S.E.2d 674, 676, *disc. review denied*, ___ N.C. ___, ___ S.E.2d ___ (2019).

“Faced with any amount of evidence that a juvenile is mentally ill, a trial court has a statutory duty to refer the juvenile to the area mental health services director for appropriate action.” *Id.* at ___, 823 S.E.2d at 677 (quotation marks and ellipses omitted). Section 7B-2502(c) “envisions the area mental health services director's involvement in the juvenile's disposition and responsibility for arranging an interdisciplinary evaluation of the juvenile and mobilizing resources to meet the juvenile's needs.” *Id.* at ___, 823 S.E.2d 677-78 (brackets and quotation marks omitted).

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In *E.M.*, the trial court improperly committed the juvenile to a youth development center despite “a plethora of evidence demonstrating that [the juvenile] was mentally ill.” *Id.* at ___, 823 S.E.2d at 677. The record before the trial court established that the juvenile had received—and still required—significant mental health treatment. *Id.* at ___, 823 S.E.2d at 677. A disposition report presented to the trial court revealed that the juvenile had been diagnosed with several mental disorders. *Id.* at ___, 823 S.E.2d at 677. Accordingly, this Court vacated the order and remanded to the trial court with instructions to include a referral to the area mental health services director. *Id.* at ___, 823 S.E.2d at 678.

The State concedes that the instant case is indistinguishable from *E.M.*, and agrees that the trial court erred in failing to refer Evan to the area mental health services director. The concession is well warranted. In its order, the trial court stated that it received and considered a predisposition report, a risk assessment, and a needs assessment. The predisposition report referred to a clinical assessment completed by Haven House Services, which diagnosed Evan with conduct disorder, and recommended intensive outpatient services. In addition, the Haven House Assessment stated that (1) Evan’s conduct disorder “causes clinically significant impairment in social, academic, or occupational functioning”; (2) Evan needs substance abuse treatment; and (3) Evan’s behavior indicates a need for additional mental health assessment and treatment.

Conclusion

It is patently clear that the evidence before the trial court presented Evan as being mentally ill. Pursuant to N.C. Gen. Stat. § 7B-2502, the trial court’s failure to refer Evan to the area mental health services director constitutes reversible error. Accordingly, we vacate the order and remand to the trial court for referral to the area mental health services director.³

VACATED AND REMANDED.

Judges ARROWOOD and HAMPSON concur.

³ We recognize that the position of “area mental health, developmental disabilities, and substance abuse services director” no longer exists as referenced in N.C. Gen. Stat. § 7B-2502(c). See Jacquelyn Greene, *Mental Health Evaluations Required Prior to Delinquency Dispositions, On the Civil Side*, UNC School of Government (Jan. 22, 2019, 8:00 a.m.), [<https://perma.cc/TN5N-HHQS>]. In 1974, the General Assembly mandated referral to the “area mental health director” when the trial court was presented with evidence that the juvenile suffered from a mental illness. 1973 N.C. Sess. Laws 271, 271, ch. 1157. The area director referenced in § 7B-2502(c) is now identified as the “local management entity/managed care organization” found in N.C. Gen. Stat. § 122C-3(20b). Greene, *supra*. We strongly encourage the General Assembly to update the language of § 7B-2502(c) to reflect the current understanding and need for mental health treatment for juveniles. See K. Edward Greene, *Mental Health Care for Children: Before and During State Custody*, 13 CAMPBELL L. REV. 1, 54 (1990) (“[The child’s] right to mental health care is derived, if at all, from statutes, and legislatures have been reluctant to mandate the delivery of such care.”).