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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-85

Filed: 6 August 2019

Guilford County, Nos. 16CRS78857, 16CRS87504

STATE OF NORTH CAROLINA

v.

JEROME CANNON MCCOY, Defendant.

Appeal by defendant from judgment entered 31 May 2018 by Judge Stanley L. Allen in Guilford County Superior Court. Heard in the Court of Appeals 5 June 2019.

*Attorney General Joshua H. Stein, by Assistant Attorney General Norlan Graves, for the State.*

*Appellate Defender Glenn Gerding, by Assistant Appellate Defender Katherine Jane Allen, for defendant-appellant.*

BERGER, Judge.

Jerome Cannon McCoy (“Defendant”) filed a petition for *writ of certiorari* from judgment entered on his guilty plea to two counts of habitual larceny. On appeal, Defendant contends that the trial court erred in accepting his plea because the State failed to establish a sufficient factual basis to support his plea. The State filed a motion to dismiss the appeal. For the reasons stated herein, we grant the State’s

motion to dismiss and deny Defendant's petition for *writ of certiorari* in our discretion.

Factual and Procedural Background

On January 23, 2017, Defendant was indicted for larceny from a Sheetz gas station and for habitual larceny. On March 19, 2018, Defendant was again indicted for larceny from a Harris Teeter grocery store and for habitual larceny.

On May 31, 2018, Defendant entered a plea of guilty in Guilford County Superior Court to all charges pursuant to a plea arrangement with the State. During his colloquy with the trial court at the plea hearing, Defendant agreed that there was a factual basis for entry of the plea, and the State summarized the evidence against Defendant. Pursuant to the plea, Defendant's charges were consolidated into one Class H felony, and he received an active sentence of 12-24 months in prison. In addition, Defendant was not required to begin serving his sentence immediately as the trial court stayed execution of his sentence until the following day.

On June 11, 2018, Defendant gave written notice of appeal. However, in light of the defects in his appeal and for substantive purposes, Defendant filed a petition for *writ of certiorari*. Subsequently, the State filed a motion to dismiss the appeal. On appeal, Defendant argues that the trial court erred in accepting his plea because the State failed to establish a sufficient factual basis to support his plea in accordance

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with N.C. Gen. Stat. § 15A-1022(c). Specifically, Defendant contends that the State failed to offer a factual basis for one of his habitual larceny charges.

Analysis

“In North Carolina, a defendant’s right to appeal in a criminal proceeding is purely a creation of state statute.” *State v. Pimental*, 153 N.C. App. 69, 72, 568 S.E.2d 67, 869 (2002). A defendant “does not have an appeal as a matter of right to challenge the courts acceptance of his guilty plea.” *State v. Bolinger*, 320 N.C. 596, 601, 359 S.E.2d 459, 462 (1987). Appeals from trial court judgments entered upon a plea of guilty are permitted but limited to certain issues identified in Section 15A-1444 of the North Carolina General Statutes. Section 15A-1444 states in pertinent part:

(e) Except as provided in subsections (a1) and (a2) of this section and G.S. 15A-979, and except when a motion to withdraw a plea of guilty or no contest has been denied, the defendant is not entitled to appellate review as a matter of right when he has entered a plea of guilty or no contest to a criminal charge in the superior court, but he may petition the appellate division for review by writ of certiorari.

N.C. Gen. Stat. § 15A-1444(e) (2017).

Moreover,

[a]ny party entitled by law to appeal from a judgment . . . of a superior or district court rendered in a criminal action may take appeal by filing notice of appeal with the clerk of superior court and serving copies thereof upon all adverse parties within fourteen days after entry of the judgment . . . .

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N.C.R. App. P. 4(a). The notice of appeal must “specify the party or parties taking the appeal; shall designate the judgment or order from which appeal is taken and the court to which appeal is taken; and shall be signed ... by any such party not represented by counsel of record.” N.C.R. App. P. 4(b). “Our Supreme Court has said that a jurisdictional default, such as a failure to comply with Rule 4, precludes the appellate court from acting in any manner other than to dismiss the appeal.” *State v. Hammonds*, 218 N.C. App. 158, 162, 720 S.E.2d 820, 823 (2012) (citation and quotation marks omitted).

Defendant has no right of appeal pursuant to Section 15A-1444(e). In addition, Defendant’s notice of appeal did not identify the court to which the appeal is taken, and was not filed and served upon the district attorney. Defendant’s appeal is dismissed.

In light of the defects in his notice of appeal, and in recognition that, having pled guilty to habitual larceny, he lacks a statutory right to present his issue on direct appeal, Defendant filed a petition for a *writ of certiorari*.

This Court possesses the authority to issue a *writ of certiorari* “in appropriate circumstances . . . to permit review of the judgments and orders of trial tribunals when the right to prosecute an appeal has been lost by failure to take timely action[.]” N.C.R. App. P. 21(a)(1). When a defendant petitions this Court for a *writ of certiorari* under Section 15A-1444, it “must show merit or that error was probably committed

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below. *Certiorari* is a discretionary writ, to be issued only for good and sufficient cause shown.” *State v. Monroe*, \_\_\_ N.C. App. \_\_\_, \_\_\_, 822 S.E.2d 872, 874 (2017) (citations and quotation marks omitted).

In our discretion, we deny Defendant’s petition for *certiorari* in accordance with *State v. Monroe*, \_\_\_ N.C. App. \_\_\_, 822 S.E.2d 872 (2017), in which this Court denied the defendant’s petition for *writ of certiorari* because the defendant failed to preserve his issue on appeal.

“In order to preserve a question for appellate review, a party must have presented the trial court with a timely request, objection or motion, stating the specific grounds for the ruling sought if the specific grounds are not apparent.” *State v. Eason*, 328 N.C. 409, 420, 402 S.E.2d 809, 814 (1991); *see also* N.C.R. App. P. 10(a)(1). In *State v. Monroe*, the defendant also filed a petition for a *writ of certiorari* in light of defects in his appeal and to address his argument that the trial court erred in accepting his guilty plea when it was not supported by a sufficient factual basis since he did not have a statutory right to appeal. *Monroe*, \_\_\_ N.C. App. at \_\_\_, 822 S.E.2d at 874-75. This Court applied *State v. Kimble*, 141 N.C. App. 144, 539 S.E.2d 342 (2000), and held that the defendant had not properly preserved his issue for appellate review:

In *Kimble*, the defendant argued on appeal that the trial court erroneously entered judgment against him for eight counts of solicitation to commit first-degree murder because there was an insufficient factual basis for his

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guilty plea, in violation of N.C. Gen. Stat. § 15A-1022(c). In the alternative, the defendant argued that the State's factual narrative only supported one solicitation. Our Court noted that the defendant did not object during the plea hearing to the State's summary of the factual basis for these charges, the defendant did not argue before the trial court that only one count of solicitation was supported by a sufficient factual basis, and the defendant's motion to withdraw his guilty plea after entry of judgment did not include an insufficient factual basis argument. Citing to the North Carolina Rules of Appellate Procedure, our Court held that because the issue on appeal was not raised before the trial court, it was not properly before this Court.

....

Like the *Kimble* defendant, at no time during the plea hearing did defendant argue that the factual basis for the entry of judgment against him on all the charges were insufficient. Rather, defendant continuously interrupted the trial court's attempt to provide a factual basis and insisted that the court move on to sentencing. In addition, defendant's motion to withdraw his plea was not based on the argument of an insufficient factual basis to support his plea. Assuming *arguendo* that we granted defendant's petition, the issue would not be properly before us due to his failure to raise this argument to the trial court. Accordingly, defendant's . . . petition for *writ of certiorari* is denied.

*Id.* at \_\_\_, 822 S.E.2d at 874-75 (citations and quotation marks omitted).

Here, in the trial court Defendant neither argued that the factual basis for the entry of judgment supported only one count of habitual larceny, nor sought to withdraw his plea. Furthermore, Defendant did not object following the State's recitation of the evidence. Rather, Defendant stipulated in the trial court that there

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was a factual basis for his guilty plea and received the benefit of his plea bargain with the State.

Conclusion

Defendant has no right of appeal pursuant to Section 15A-1444(e), and his appeal is dismissed. In addition, we deny Defendant's petition for *writ of certiorari* in our discretion.

DISMISSED.

Judges DIETZ and HAMPSON concur.

Report per Rule 30(e).