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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-952

Filed: 6 October 2020

Northampton County, Nos. 17CRS102-103, 17CRS123, 17CRS356

STATE OF NORTH CAROLINA

v.

CLARENCE JACKSON, Defendant.

Appeal by Defendant from judgments entered 23 April 2019 by Judge Cy A. Grant in Superior Court, Northampton County. Heard in the Court of Appeals 3 March 2020.

Attorney General Joshua H. Stein, by Assistant Attorney General Nicholas R. Sanders, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Jillian C. Katz, for Defendant.

McGEE, Chief Judge.

Clarence Jackson (“Defendant”) appeals judgments entered upon his guilty plea to five counts of insurance fraud and five counts of obtaining property by false pretenses. Defendant argues that the trial court erred because (1) its written judgment for 17 CRS 356 did not reflect its oral pronouncement during sentencing

and (2) it imposed a term of probation for sixty months without making a finding that the longer term of probation was necessary under N.C. Gen. Stat. § 15A-1343.2(d). We remand to the trial court.

I. Factual and Procedural Background

Defendant was indicted for one count each of insurance fraud, obtaining property by false pretenses, and common law forgery in file numbers 17 CRS 102 and 103 on 8 August 2016; one count each of insurance fraud, obtaining property by false pretenses, and common law forgery in file number 17 CRS 356 on 11 August 2014; one count each of obtaining property by false pretenses and insurance fraud in file numbers 17 CRS 123 and 124 on 15 August 2016; and one count each of insurance fraud, obtaining property by false pretenses, and common law forgery in file number 14 CRS 50129 on 2 January 2018. A plea hearing was held on 23 April 2019 in Northampton County, Superior Court. Defendant pled guilty to five counts of insurance fraud and five counts of obtaining property by false pretenses; the State dismissed the remaining charges.

The trial court orally sentenced Defendant to four consecutive sentences: (1) 8-19 months of imprisonment in 17 CRS 102; (2) 8-19 months of imprisonment in 17 CRS 103; (3) 8-19 months of imprisonment in 17 CRS 123; and (4) 8-19 months of imprisonment in 17 CRS 356. The trial court announced in open court that the third

and fourth judgments were to be suspended for a term of supervised probation for 60 months. However, the only written judgment that reflects the suspended sentence is 17 CRS 356; the written judgment in 17 CRS 123 imposes an active sentence.

Defendant filed a *pro se* written notice of appeal on 1 May 2019. Defendant's brief and a simultaneous petition for writ of certiorari were filed on 14 November 2019. The State filed a response to Defendant's petition for writ of certiorari, a simultaneous motion to dismiss Defendant's appeal, and its brief on 17 December 2019. In response, Defendant filed an amended petition for writ of certiorari on 19 December 2019.

II. Appellate Jurisdiction

As an initial matter, we must address the State's motion to dismiss and Defendant's petitions for writ of certiorari. For purposes of this appeal, we consider Defendant's initial petition for writ of certiorari (14 November 2019) and amended petition for writ of certiorari (19 December 2019) as one unified petition for writ of certiorari (the "PWC").

A. Motion to Dismiss

The State filed a motion to dismiss Defendant's appeal based on Defendant's failure to comply with Rule 4 of the North Carolina Rules of Appellate Procedure.

STATE V. JACKSON

Opinion of the Court

Appellate Rule 4(a) requires an appealing party to either give oral notice of appeal at trial or to file a written notice of appeal and serve copies on all adverse parties within fourteen days of judgment; Appellate Rule 4(b) sets forth the requirements for a written notice of appeal, which include a mandate that the notice “designate the judgment or order from which appeal is taken and the court to which appeal is taken.” N.C. R. App. P. 4(a)-(b). The State contends that Defendant’s *pro se* notice of appeal is deficient under Rule 4 because: the file stamp indicates the appeal was not timely filed, N.C. R. App. P. 4(a); the notice does not state to which court appeal is taken, N.C. R. App. P. 4(b); and there is no certificate of service, N.C. R. App. P. 4(a)(2).

“We note that when a defendant has not properly given notice of appeal, this Court is without jurisdiction to hear the appeal.” *State v. McCoy*, 171 N.C. App. 636, 638, 615 S.E.2d 319, 320 (2005) (citation omitted). Simply put, a jurisdictional default “precludes the appellate court from acting in any manner other than to dismiss the appeal.” *Dogwood Dev. & Mgmt. Co., LLC v. White Oak Transp. Co.*, 362 N.C. 191, 197, 657 S.E.2d 361, 365 (2008) (citation omitted). Thus, in the absence of jurisdiction, we allow the State’s motion to dismiss.

B. Petition for Writ of Certiorari

Acknowledging that his notice of appeal did not comply with Rule 4 and that generally no appeal of right exists upon his guilty plea, Defendant has filed the PWC. Regarding writs of certiorari, Appellate Rule 21 states,

[t]he writ of certiorari may be issued in appropriate circumstances by either appellate court 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, or when no right of appeal from an interlocutory order exists, or for review pursuant to N.C.G.S. § 15A-1422(c)(3) of an order of the trial court ruling on a motion for appropriate relief.

N.C. R. App. P. 21(a)(1).

We note that Defendant's request that we issue a writ of certiorari to review his appeal despite the technical defects in his notice of appeal invokes a ground expressly permitted by Appellate Rule 21(a)(1) – the “right to prosecute an appeal has been lost by failure to take timely action[.]” *Id.* However, Defendant's request that we issue a writ of certiorari to review his appeal following the entry of his guilty plea does not arise from any of the procedural contexts specified in Rule 21. *Id.* This distinction is inconsequential, however, as the North Carolina Supreme Court recently held that this Court's authority to issue writs of certiorari is not limited to the grounds explicitly set forth in Rule 21:

the Court of Appeals ha[s] both the jurisdiction and the discretionary authority to issue defendant's writ of certiorari. Absent specific statutory language limiting the

Court of Appeals' jurisdiction, the [C]ourt maintains its jurisdiction and discretionary authority to issue the prerogative writs, including certiorari. Rule 21 does not prevent the Court of Appeals from issuing writs of certiorari or have any bearing upon the decision as to whether a writ of certiorari should be issued. Therefore, the Court of Appeals should exercise its discretion to determine whether it should grant or deny defendant's petition for writ of certiorari.

State v. Ledbetter, 371 N.C. 192, 197, 814 S.E.2d 39, 43 (2018). Thus, in the absence of a statutory limitation on this Court's authority, we have the "jurisdiction and discretionary authority to issue" writs of certiorari. *Id.*

A defendant seeking appellate review of a judgment entered upon a guilty plea is authorized by statute to petition for a writ of certiorari. N.C. Gen. Stat. § 15A-1444(e) (2019). N.C.G.S. § 15A-1444(e) enumerates the limited circumstances wherein a defendant has an appeal of right from a judgment entered upon a guilty plea and states that a defendant who falls outside these limited circumstances "*may petition the appellate division for review by writ of certiorari.*" N.C.G.S. § 15A-1444(e) (emphasis added). Accordingly, even if a defendant's purported appeal does not arise under any of the exceptions enumerated in N.C.G.S. § 15A-1444(e)—as is the case with Defendant's purported appeal here—the defendant is statutorily authorized to file a petition for writ of certiorari. *Id.*

"Certiorari is a discretionary writ, to be issued only for good and sufficient cause shown." *State v. Grundler*, 251 N.C. 177, 189, 111 S.E.2d 1, 9 (1959) (citation

omitted). “A petition for the writ must show merit or that error was probably committed below.” *Id.* (citation omitted).

In the present case, Defendant’s PWC shows, and the State agrees, that error was committed below. The State concedes that the trial court made a clerical error when reducing Defendant’s orally announced sentence to writing in 17 CRS 123, but asserts that appellate review is not necessary to correct the error. The State also concedes that the trial court violated the mandate of N.C.G.S. § 15A-1343.2(d) by sentencing Defendant to sixty months of probation without finding that a longer term of probation was necessary. Assuming, *arguendo*, that the clerical error in 17 CRS 123 could be remedied without appellate review, a writ of certiorari should issue in order to prevent Defendant from serving an erroneous probationary term in violation of N.C.G.S. § 15A-1343.2(d). Therefore, in our discretion, we elect to grant Defendant’s PWC, and issue a writ of certiorari in order to reach the merits of the issues Defendant raises on appeal.

III. Analysis

First, Defendant argues that a new sentencing hearing is required because the trial court violated Defendant’s right to be present when the sentence in 17 CRS 123 was imposed or, alternatively, that the written judgment contains a clerical error that

must be corrected on remand. The State concedes a clerical error was made when reducing the oral rendition of the sentence to writing in 17 CRS 123.

A review of the transcript of the sentencing hearing reveals that the trial court orally pronounced that the judgments in 17 CRS 123 and 356 shall be suspended for sixty months of probation; however, the written judgment in 17 CRS 123 erroneously reflects an active sentence of 8-19 months imprisonment. This is a clerical error. *State v. Taylor*, 156 N.C. App. 172, 177, 576 S.E.2d 114, 117-18 (2003) (defining clerical error as “an error resulting from a minor mistake or inadvertence, esp. in writing or copying something on the record, and not from judicial reasoning or determination” (citations and quotation marks omitted)); *State v. Lawing*, 12 N.C. App. 21, 23, 182 S.E.2d 10, 11-12 (1971) (holding that in a criminal case, a clerical error exists when a written judgment does not reflect what a trial court pronounced in open court).

“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 (2008) (citation and quotation marks omitted). In this case, because the written judgment does not reflect the trial court’s oral judgment, we remand to the trial court to correct the clerical error.

Second, Defendant argues that the trial court erred by imposing sixty months of probation in 17 CRS 123 and 356 without finding a longer period of probation was necessary under N.C.G.S. § 15A-1343.2(d). The State concedes that the trial court erred and agrees that the case should be remanded.¹

“The Court conducts a de novo review of a question of law to determine whether a trial court has violated a statutory mandate.” *State v. Rutledge*, __ N.C. App. __, __, 832 S.E.2d 745, 747 (2019) (citation omitted). Pursuant to N.C.G.S. § 15A-1343.2(d),

[u]nless the court makes specific findings that longer or shorter periods of probation are necessary, the length of the original period of probation for offenders sentenced under Article 81B shall be . . . [f]or felons sentenced to community punishment, not less than 12 nor more than 30 months . . . [and f]or felons sentenced to intermediate punishment, not less than 18 nor more than 36 months.

N.C. Gen. Stat. § 15A-1343.2(d) (3)-(4) (2019). In the present case, the trial court suspended Defendant’s sentences in 17 CRS 123 and 356 for a period of 60 months supervised probation, in violation of N.C.G.S. § 15A-1343.2(d). Thus, we remand for entry of specific findings by the trial court indicating why a longer probationary

¹ The State contends that because Defendant was convicted of a Class H Felony and was a prior record level II, community punishment was not an authorized disposition under N.C.G.S. § 15A-1340.17. However, the State concedes that the sixty month period of probation imposed still exceeds the maximum period of 36 months for felons sentenced to intermediate punishment and “concedes that the appropriate remedy in this case is to remand for resentencing to allow the trial court to either impose a probationary term consistent with N.C.G.S. § 15A-1343.2(d) or find that a longer probationary period is necessary.”

period is necessary or reduction of Defendant's probation to a length of time authorized by N.C.G.S. § 15A-1343.2(d).

III. Conclusion

For the reasons discussed above, we grant the State's motion to dismiss; however, in our discretion, we allow Defendant's petition for writ of certiorari as amended. We remand to the trial court (1) for correction of the clerical error, and (2) for resentencing to either impose a probationary term consistent with N.C.G.S. § 15A-1343.2(d) or make a finding that a longer probationary period is necessary.

REMANDED.

Judges TYSON and YOUNG concur.

Report per Rule 30(e)