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IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-390

No. COA20-135

Filed 20 July 2021

Buncombe County, No. 17CRS086500, 86501, & 86503

STATE OF NORTH CAROLINA

v.

SHAMAR DENNIS POWELL, Defendant.

Appeal by Defendant from judgment entered 25 March 2019 by Judge Peter B. Knight in Buncombe County Superior Court. Heard in the Court of Appeals 10 March 2021.

*Attorney General Joshua H. Stein, by Special Deputy Attorney General Thomas J. Campbell, for the State.*

*Guy J. Loranger for the Defendant.*

DILLON, Judge.

I. Background

¶ 1 Defendant Shamar D. Powell was tried and found guilty of three felonies. Additionally, the trial court entered civil judgments requiring Defendant to pay \$52,192.26 in restitution, \$3,570.10 in attorney fees and expenses, and a \$60.00 attorney appointment fee. Defendant gave oral notice of appeal.

¶ 2 On appeal, he only challenges the civil judgments. Appeals from those judgments required that he give *written* notice of appeal. *See* N.C. R. App. P. 3(a) (requiring appellants in civil action to file a notice of appeal with the clerk of the superior court and serve copies on all parties in a timely manner). Defendant, however, has filed a petition for writ of *certiorari* regarding the civil judgments. We exercise our discretion and grant Defendant's writ.

## II. Analysis

### A. Restitution

¶ 3 Defendant argues that the trial court erred by ordering him to pay \$52,192.26 in restitution when there was no competent evidence in the record to support the amount. We review whether a trial court's restitution order is supported by competent evidence *de novo*. *State v. Wilson*, 340 N.C. 720, 726, 459 S.E.2d 192, 196 (1995).

¶ 4 We agree with Defendant. We conclude that there was no competent evidence in the record to support the restitution amount. The State did present a restitution worksheet, but the worksheet was not supported by documentation or testimony to justify the amount. Defendant did not stipulate to the amount. Thus, competent evidence was not present. *See State v. Swann*, 197 N.C. App. 221, 225, 676 S.E.2d 654, 657-58 (2009). Therefore, that portion of the order must be vacated.

### B. Opportunity To Be Heard

¶ 5 Defendant further argues that the trial court erred by ordering him to pay \$5,570.10 in attorney fees and expenses, plus a \$60.00 attorney appointment fee, without providing him any opportunity to be heard. The State concedes this point, stating in its brief that “the trial court probably erred in imposing restitution, attorney fees, and expenses, and the appointment fee against the Defendant.”

¶ 6 Our Supreme Court has held that it is error for a trial court to enter an award for attorney fees against a criminal defendant without providing the defendant an opportunity to be heard. *State v. Crews*, 284 N.C. 427, 441-42, 201 S.E.2d 840, 849-50 (1974). Here, it is undisputed that Defendant was not provided an opportunity to be heard on the various fees attributed, thus error occurred. Therefore, that portion of the order must be vacated.

### III. Conclusion

¶ 7 We conclude that the trial court erred on the issues of restitution and attorney fees. Accordingly, we vacate and remand for the trial court to order a hearing on restitution and to provide the Defendant an opportunity to be heard on the matter of attorney fees. The trial court may allow the parties to present evidence at this hearing.

VACATED AND REMANDED.

Judges HAMPSON and GRIFFIN concur.

Report per Rule 30(e).