IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-824

Filed 18 July 2023

Lenoir County, No. 14 CRS 51201

STATE OF NORTH CAROLINA

v.

WILLIE RAY HINES

Appeal by defendant from order entered 25 May 2022 by Judge Imelda J. Pate in Lenoir County Superior Court. Heard in the Court of Appeals 24 May 2023.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Sonya Calloway-Durham, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Michele Goldman, for defendant-appellant.

ZACHARY, Judge.

Defendant Willie Ray Hines appeals from an order requiring him to enroll in satellite-based monitoring ("SBM") for a period of ten years. Because the record on appeal does not include a complete copy of this order, appellate review is impossible, and we dismiss Defendant's appeal.

I. Background

On 1 July 2015, Defendant entered an *Alford* plea[1] of guilty to attempted second-degree rape. In accordance with the terms of the plea agreement, the trial court sentenced Defendant to 58 to 130 months' imprisonment in the custody of the North Carolina Division of Adult Correction ("DAC"), ordered that Defendant "register as a sex offender . . . for a period of 30 years[,]" and directed that Defendant "be returned to this [c]ourt on . . . [14 September 2015] for a determination of the need for [SBM.]"

Approximately ten months after Defendant was released from prison, he was charged with new offenses including sexual battery, a reportable offense. *See* N.C. Gen. Stat. § 14-208.6(4)(a) (2021) (classifying a "sexually violent" offense as a "reportable conviction"); *id.* § 14-208.6(5) (categorizing "sexual battery" as a "sexually violent" offense). In December 2021, Defendant pleaded guilty to these charges and was returned to the custody of DAC. DAC officers later discovered that Defendant had not been returned to court in 2015 for his SBM "bring-back" hearing. On 25 May 2022, the trial court conducted Defendant's SBM "bring-back" hearing and ordered that Defendant enroll in SBM for a period of ten years by order entered that same day. Defendant timely filed written notice of appeal.

II. Discussion

[1] An *Alford* plea is a guilty plea in which the defendant does not admit to any criminal act, but admits that there is sufficient evidence to convince the judge or jury of the defendant's guilt. *See North Carolina v. Alford*, 400 U.S. 25, 37, 27 L. Ed. 2d 162, 171 (1970); *State v. Baskins*, 260 N.C. App. 589, 592 n.1, 818 S.E.2d 381, 387 n.1 (2018), *disc. review denied*, 372 N.C. 102, 824 S.E.2d 409 (2019).

On appeal, Defendant contends that "[t]he trial court exceeded its authority when it ordered [Defendant] to submit to ten years of [SBM] because [Defendant] did not meet the statutory requirements for imposing [SBM]." However, the record on appeal does not include a complete copy of the trial court's order from which this appeal was taken.

The North Carolina Rules of Appellate Procedure are "designed primarily to keep the appellate process flowing in an orderly manner." *Dogwood Dev. & Mgmt. Co. v. White Oak Transp. Co.*, 362 N.C. 191, 198, 657 S.E.2d 361, 365 (2008) (citation and internal quotation marks omitted). "It is the appellant's duty and responsibility to see that the record is in proper form and complete." *State v. Alston*, 307 N.C. 321, 341, 298 S.E.2d 631, 644 (1983).

Rule 9 of the North Carolina Rules of Appellate Procedure requires that the printed record on appeal in a civil action contain "a copy of the judgment, order, or other determination from which appeal is taken[.]" N.C.R. App. P. 9(a)(1)(h). Moreover, the printed record in a civil action must also contain "so much of the litigation . . . as is necessary for an understanding of all issues presented on appeal[.]" N.C.R. App. P. 9(a)(1)(e).

However, "noncompliance with the appellate rules does not, ipso facto, mandate dismissal of an appeal." *Dogwood*, 362 N.C. at 194, 657 S.E.2d at 363. "Whether and how a court may excuse noncompliance with the rules depends on the nature of the default." *Id.* (noting that "default under the appellate rules arises

primarily from . . . (1) waiver occurring in the trial court; (2) defects in appellate jurisdiction; and (3) violation of non[-]jurisdictional requirements").

"A jurisdictional default . . . precludes the appellate court from acting in any manner other than to dismiss the appeal." *Id.* at 197, 657 S.E.2d at 365. "[W]hen a party fails to comply with one or more non[-]jurisdictional appellate rules, the court should first determine whether the noncompliance is substantial or gross[.]" *Id.* at 201, 657 S.E.2d at 367. When determining whether a party's failure to comply with the appellate rules "rises to the level of a substantial failure or gross violation, the court may consider, among other factors, whether and to what extent the noncompliance impairs the court's task of review and whether and to what extent review on the merits would frustrate the adversarial process." *Id.* at 200, 657 S.E.2d at 366–67.

Here, after careful review of the record, we conclude that Defendant's failure to comply with Rule 9 is a "substantial" and "gross" violation of the appellate rules, *id.*, rendering appellate review on the merits impossible. In the final order from which Defendant appeals, titled "Judicial Findings And Order For Sex Offenders – Active Punishment[,]" the trial court ordered that Defendant submit to SBM for ten years "[b]ased on the risk assessment by [DAC], all relevant evidence, and the *additional findings on the attached AOC-CR-618*[.]" (Emphasis added). The record does not include the AOC-CR-618.

As noted above, it is the "duty and responsibility" of the appellant to ensure

that the appellate "record is in proper form and complete." *Alston*, 307 N.C. at 341, 298 S.E.2d at 644. Nevertheless, in the present case, Defendant provides no explanation for the absence of the additional findings made by the trial court in support of its order imposing ten years of SBM. Rather, in his appellate brief, Defendant merely offers a vague acknowledgment that "[n]o AOC-CR-618 additional findings appear in the record." But this lone assertion is insufficient to satisfy Defendant's burden, as the appellant, of providing this Court with a proper and complete record, one that both enables our review of the trial court's order and establishes both courts' jurisdiction over the case.

Absent the additional findings on the AOC-CR-618, our Court is without the record that "is necessary for an understanding of all issues presented on appeal[.]" N.C.R. App. P. 9(a)(1)(e). Simply stated, we are unable to review the merits of Defendant's appeal without a complete SBM order, absent the additional findings upon which the trial court based its decision. *See State v. Blankenship*, 270 N.C. App. 731, 734, 842 S.E.2d 177, 180 (2020) ("We review the trial court's findings of fact [in an order imposing SBM] to determine whether they are supported by competent record evidence, and we review the trial court's conclusions of law for legal accuracy and to ensure that those conclusions reflect a correct application of law to the facts found." (citation omitted)).

Indeed, it is difficult to envision a violation for which "noncompliance impairs th[is] [C]ourt's task of review" more entirely than the appellant's failure to include

within the appellate record a complete copy of the order from which the appeal is taken. *Dogwood*, 362 N.C. at 200, 657 S.E.2d at 366. Accordingly, dismissal of Defendant's appeal is warranted.

As a result of Defendant's gross and substantial appellate rules violation, we dismiss Defendant's appeal.

DISMISSED.

Judges TYSON and STADING concur.

Report per Rule 30(e).