

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-512

Filed: 17 January 2017

Mecklenburg County, Nos. 13CRS212231, 13CRS212232, 15 CRS015980

STATE OF NORTH CAROLINA

v.

RYAN KENDELL ANDREW

Appeal by Defendant from judgments entered 19 November 2016 by Judge Todd Pomeroy in Mecklenburg County Superior Court. Heard in the Court of Appeals 3 January 2017.

*Attorney General Roy A. Cooper, III, by Assistant Attorney General Steven Armstrong, for the State.*

*Guy J. Loranger for the Defendant.*

DILLON, Judge.

On 19 November 2015, Ryan Kendell Andrew (“Defendant”) was convicted of robbery with a dangerous weapon and possession of a firearm by a felon. He was sentenced to terms of imprisonment for a minimum of seventy months and a maximum of ninety-six months for the former offense and a minimum of thirteen months and a maximum of twenty-five months for the latter offense. The sentences were ordered to run consecutively.

After the court announced its sentence, the following transpired in open court:

[THE COURT:] Mr. Corbett, are you appointed or retained?

MR. CORBETT: Your Honor, I was appointed on this matter. Respectfully, if I could submit tomorrow?

THE COURT: You take your time on giving me the fee sheet. And I will, I will either be here tomorrow or be it after the holiday, you know, you can do that as well. And I will certainly review it at that time. Okay?

Sheriff, he is in your custody.

(The defendant was removed from the courtroom at 3:35 p.m.)

Mr. Corbett then orally gave notice of appeal on Defendant's behalf.

On 1 December 2015, Mr. Corbett filed a document entitled "Non-Capital Criminal Case Trial Level Fee Application Order for Payment Judgment Against Indigent" by which Defendant was ordered to pay the sum of \$3,948.00 as attorney's fees, signed by the trial judge.

Defendant contends that the trial court erred by imposing the attorney's fees without providing him with sufficient notice and the opportunity to be heard regarding the total hours and fees claimed by his attorney. The State concedes that the trial court erred, that the order imposing attorney's fees must be vacated, and that the matter must be remanded to the trial court for a hearing at which Defendant is given adequate notice and an opportunity to be heard as to the monetary amount

he should be required to reimburse the State. *See State v. Webb*, 358 N.C. 92, 101-02, 591 S.E.2d 505, 513 (2004). *See also State v. Crews*, 284 N.C. 427, 442, 201 S.E.2d 840, 849-50 (1974).

Defendant has not raised any issue regarding the criminal convictions, and we accordingly find no error in the trial and sentence. We vacate the civil judgment imposing the fees against Defendant and remand without prejudice to the State's right to seek the imposition of attorney's fees upon proper notice and an opportunity to be heard being afforded to Defendant.

NO ERROR IN PART; VACATED AND REMANDED IN PART.

Chief Judge McGEE and Judge CALABRIA concur.

Report per Rule 30(e).