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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-325

Filed: 6 November 2018

Greene County, No. 16 CRS 50132

STATE OF NORTH CAROLINA

v.

CHARLIE VANCE RAWLINSON

Appeal by defendant from judgment entered 22 August 2017 by Judge Imelda J. Pate in Greene County Superior Court. Heard in the Court of Appeals 15 October 2018.

Attorney General Joshua H. Stein, by Assistant Attorney General Colin Justice, for the State.

Stephen G. Driggers for defendant.

ELMORE, Judge.

Defendant Charlie Vance Rawlinson pled no contest to one count of misdemeanor larceny. On appeal, defendant contends the trial court erred in ordering him to pay $1,160.00 in restitution because that amount was not supported by the evidence and was entered against defendant as a civil judgment. Defendant

further contends the trial court abused its discretion in ordering restitution without considering defendant's ability to pay the amount ordered.

Because the State's evidence failed to support the trial court's restitution award of $1,160.00, we vacate the award and remand that portion of the judgment for a new sentencing hearing.

I. Background

On 24 April 2017, a grand jury indicted defendant for one count of felony larceny based on his alleged taking of cash from a grocery store safe in February 2016. Pursuant to a plea agreement with the State, defendant pled no contest to misdemeanor larceny on 22 August 2017. The trial court thereafter sentenced defendant to 120 days in the custody of the North Carolina Misdemeanant Confinement Program and ordered him to pay $1,160.00 to Food Pride Stores, Inc., to be entered as a civil judgment. Defendant appeals.

II. Discussion

On appeal, defendant contends there was insufficient evidence to support the trial court's restitution award in the amount of $1,160.00. Defendant asserts that the State offered no evidence at all—through testimony, documentary submission, or the like—to support the restitution worksheet and unsworn statement of the prosecutor indicating that $1,160.00 was an appropriate amount. In response, the State concedes that the amount was not supported by the evidence, and we agree.

As an initial matter, we must note that defendant does not have a statutory right to appeal the judgment entered against him, but requests that this Court issue its writ of certiorari to permit appellate review of the restitution award despite his no-contest plea. *See State v. Pimental*, 153 N.C. App. 69, 72, 568 S.E.2d 867, 869 (2002) ("[A] defendant's right to appeal in a criminal proceeding is purely a creation of state statute."); *see also* N.C. Gen. Stat. § 15A-1444(e) (2017). "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). Thus, "[a] petition for the writ must show merit or that error was probably committed below." *Id.*

Here, although the State opposes defendant's petition and has moved this Court to dismiss his appeal, it concedes in its brief that error was committed at the trial court. Under such circumstances, we choose to allow defendant's petition for writ of certiorari and turn now to the merits of his appeal.

Even absent an objection, awards of restitution are reviewed *de novo*. *State v. McNeil*, 209 N.C. App. 654, 667, 707 S.E.2d 674, 684 (2011). A restitution award does not have to be supported by specific findings of fact or conclusions of law, and the quantum of evidence needed to support the award is not high. *State v. Davis*, 167 N.C. App. 770, 776, 607 S.E.2d 5, 10 (2005). Rather, when there is some evidence that the amount awarded is appropriate, it will not be overruled on appeal. *Id.*

Although the quantum of evidence needed to support a restitution award is not high, the amount awarded nevertheless "must be supported by evidence adduced at trial or at sentencing." *State v. Moore*, 365 N.C. 283, 285, 715 S.E.2d 847, 849 (2011) (citation and quotation marks omitted). "[A] restitution worksheet, unsupported by testimony or documentation, is insufficient to support an order of restitution," *id.*, as are the unsworn statements of a prosecutor, *McNeil*, 209 N.C. App. at 668, 707 S.E.2d at 684. When no evidence supports the amount ordered, a restitution award will be vacated, and the proper remedy is to remand that portion of the sentence for a new sentencing hearing. *Id.* (vacating and remanding when there was evidence of physical damage to victim's property but no evidence as to appropriate amount of restitution); *see also State v. Hunt*, ___ N.C. App. ___, ___, 792 S.E.2d 552, 563 (2016) (vacating and remanding when amount of restitution was based on prosecutor's unsworn statement, and there was "no other specific detail in the record supporting the $5,000 award").

Here, the transcript from defendant's plea and sentencing hearing plainly shows that the trial court's restitution award was not supported by the evidence. Following defendant's no-contest plea, the State's presentation of the factual basis for the plea, and the trial court's acceptance of the plea, restitution was addressed—apparently as an afterthought—as follows:

> THE COURT: I didn't ask you, I apologize before you take—is there any restitution in this case, Mr. Herring?

> [PROSECUTOR]: I think I have a restitution worksheet for one thousand something to put probably in a civil judgment.
>
> THE COURT: Also, Madam Clerk, the restitution in this matter, a civil judgment. Add that. And I do—I apologize. Mr. Herring, is that the $1,160.00 to Food Pride?
>
> [PROSECUTOR]: Yes, ma'am. Thank you.
>
> THE COURT: Okay. Thank you, sir.

This appears to be the first and only time that the issue of restitution was addressed during the entire proceeding. Accordingly, we hold that the restitution award was not supported by the evidence.

III. Conclusion

Because there was no evidence adduced at trial or sentencing to support the trial court's restitution award of $1,160.00, we vacate the award and remand that portion of the judgment for a new sentencing hearing.

In light of our holding, we decline to address defendant's remaining arguments on appeal.

VACATED AND REMANDED.

Chief Judge McGEE and Judge ARROWOOD concur.

Report per Rule 30(e).