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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-172

Filed: 1 October 2019

Pitt County, No. 16 CRS 57539

STATE OF NORTH CAROLINA

v.

ALLAN G. BATCHELOR

Appeal by defendant from order entered 27 March 2018 by Judge J. Carlton Cole in Pitt County Superior Court. Heard in the Court of Appeals 5 September 2019.

Attorney General Joshua H. Stein, by Assistant Attorney General Robert C. Ennis, for the State.

Stephen G. Driggers for defendant-appellant.

ARROWOOD, Judge.

Allan G. Batchelor (“defendant”) appeals from a criminal order for costs and restitution docketed as a civil judgment after he was found guilty of felonious habitual misdemeanor larceny. Because defendant’s notice of appeal is defective and fails to convey jurisdiction on this Court, we dismiss his appeal. Defendant, recognizing that his notice of appeal does not establish jurisdiction, has also filed a petition for a *writ of certiorari*. In our discretion, we deny the same.

STATE V. BATCHELOR

Opinion of the Court

I. Background

On 18 October 2016, defendant was arrested for stealing several items from Walmart. On 27 March 2018, a jury found defendant guilty of felonious habitual misdemeanor larceny. The trial court sentenced defendant to twenty to thirty-three months imprisonment. It also ordered that defendant pay \$433.82, consisting of \$41.32 in restitution to Walmart and \$392.50 in court costs, to be entered against defendant as a civil judgment. Defendant gave oral notice of appeal in open court.

II. Discussion

On 14 March 2019, defendant filed a petition for a *writ of certiorari* (“PWC”). In his PWC, defendant acknowledged his notice of appeal in open court was defective because it was not in writing as required by N.C.R. App. P. 3(a) for appeals of civil judgments. Nevertheless, he urges this Court to grant his PWC because he should not be punished for failing to anticipate his argument on appeal and his argument on appeal has merit. In support of his claim, he cites *State v. Friend*, __ N.C. App. __, __, 809 S.E.2d 902, 905 (2018), where this Court granted the defendant’s PWC because we found the defendant’s argument on the issue of attorney’s fees to have merit.

In its response to defendant’s PWC, the State argues defendant’s failure to file a written notice of appeal in compliance with Appellate Procedure Rule 3(a) justifies dismissal of his appeal for lack of jurisdiction. It further argues defendant’s petition

STATE V. BATCHELOR

Opinion of the Court

should not be granted because defendant failed to follow well settled procedure for appealing a civil judgment imposing monetary obligations and doing otherwise would render meaningless the rules governing the timing and method of appeal. Alternatively, the State argues defendant failed to show the issue he raised on appeal has merit.

Due to defendant's noncompliance with Appellate Procedure Rule 3(a), we dismiss his appeal for lack of jurisdiction. *See State v. Springle*, 244 N.C. App. 760, 763, 781 S.E.2d 518, 520 (2016) (quoting *In re Moore*, 234 N.C. App. 37, 40, 758 S.E.2d 33, 36 (2014)) ("failure to comply with Rule 3 is a jurisdictional default that prevents this Court from acting in any manner other than to dismiss the appeal.") (internal quotation marks and citation omitted). In our discretion, we deny defendant's PWC.

A. Standard of Review

This Court may issue a *writ of certiorari* "in appropriate circumstances . . . to permit review of the judgments . . . of trial tribunals when the right to prosecute an appeal has been lost by failure to take timely action[.]" N.C.R. App. P. 21(a)(1) (2019). "A petition for the writ [of certiorari] must show merit or that error was probably committed below." *State v. Grundler*, 251 N.C. 177, 189, 111 S.E.2d 1, 9 (1959). "The decision concerning whether to issue a writ of certiorari is discretionary, and thus, the Court of Appeals *may* choose to grant such a writ to review . . . issues that are meritorious *but not* [for issues] for which a defendant has failed to show good or

sufficient cause.” *State v. Ledbetter*, __ N.C. App. __, __, 819 S.E.2d 591, 592 (2018) (quoting *State v. Ross*, 369 N.C. 393, 400, 794 S.E.2d 289, 293 (2016)) (emphasis in original).

B. No Meritorious Claim

Defendant argues his claim has merit and should be granted review because the trial court erred by entering an order for court costs and restitution to be docketed against him as a civil judgment at sentencing. While he concedes N.C. Gen. Stat. §§ 7A-304 and 15A-1340.34 direct a court to order a defendant to pay costs and restitution, he argues such costs and restitution may not be “docketed *from the outset* as civil judgments.” (emphasis in original). We disagree.

N.C. Gen. Stat. § 7A-304(a) mandates courts assess and collect certain costs “[i]n every criminal case in the superior or district court, wherein the defendant is convicted” N.C. Gen. Stat. § 7A-304(a) (2017). The statute is silent regarding whether payment of these costs can be enforced as civil judgments. Despite this silence, defendant argues the court cannot impose these costs as a civil judgment unless he first defaults in payment pursuant to N.C. Gen. Stat. § 15A-1365. He further argues N.C. Gen. Stat. § 15A-1365 may prevent entry of a civil judgment as long as he is serving his prison sentence. N.C. Gen. Stat. § 15A-1365 (2017).

The cited statute, N.C. Gen. Stat. § 15A-1365, is not applicable to the initial assessment of costs, but only in cases where a defendant has defaulted. We therefore

find no merit in this argument. Furthermore, because we can find no statutory limitation on the trial court's authority to assess and collect costs as civil judgments as an initial matter, we reject defendant's contention that this argument justifies issuance of a *writ of certiorari*.

We similarly reject defendant's argument that the court erred in imposing restitution as a civil judgment. N.C. Gen. Stat. § 15A-1340.34 provides: "When sentencing a defendant convicted of a criminal offense, the court shall determine whether the defendant shall be ordered to make restitution to any victim of the offense in question." N.C. Gen. Stat. § 15A-1340.34(a) (2017). In support of his argument that the trial court could not order restitution here, defendant points to subsection (b) of that statute, which addresses restitution by defendants convicted of offenses governed by the Crime Victim's Rights Act ("VRA"), N.C. Gen. Stat. § 15A-1340.34(b) (2017). Restitution orders under subsection (b) in excess of \$250.00 may be entered as a civil judgment pursuant to N.C. Gen. Stat. § 15A-1340.38(a) (2009). However, even "[w]hen subsection (b) . . . does not apply, the court may . . . require that the defendant make restitution to the victim or the victim's estate for any injuries or damages arising directly and proximately out of the offense committed by the defendant." N.C. Gen. Stat. § 15A-1340.34(c) (2017).

Defendant argues the offense for which he was convicted, larceny, is not one to which the VRA applies. Thus, the trial court may not enforce restitution as a civil

judgment against him under N.C. Gen. Stat. § 15A-1340.38(a). This argument fails because the trial court may still order restitution under N.C. Gen. Stat. § 15A-1340.34(c) for non-VRA offenses, including larceny. *See* N.C. Gen. Stat. § 15A-1340.34(c) (2017). Furthermore, N.C. Gen. Stat. § 15-8 grants the trial court authority to award restitution where a defendant is convicted of stealing goods, and to “make all such orders and issue such writs of restitution or otherwise as may be necessary for that purpose.” N.C. Gen. Stat. § 15-8 (2017).

Defendant argues “there is no clear legal authority for criminal obligations to be docketed *from the outset* as civil judgments.” He further argues the fact other statutes impose limitations on restitution orders precludes a broad interpretation of North Carolina courts’ statutory authority to impose restitution as a civil judgment. We reject defendant’s argument. The mere fact our legislature saw fit to limit imposition of restitution orders in other statutes does not mean it intended to limit the manner in which restitution is imposed under N.C. Gen. Stat. §§ 15A-1340.34(c) and 15-8. On the contrary, that the legislature imposed limitations in some statutes but not others lends support for the opposite conclusion: where no limitations were imposed, the legislature intended to grant the courts broad discretion. Thus, given the trial court’s broad authorization under N.C. Gen. Stat. § 15-8 to “make all such orders and issue such writs of restitution or otherwise as may be necessary,” it had the authority to enforce, *ab initio*, restitution by civil judgment.

STATE V. BATCHELOR

Opinion of the Court

III. Conclusion

Because defendant's notice of appeal fails to convey jurisdiction, the appeal is dismissed. In our discretion, we deny defendant's petition for a *writ of certiorari*.

DISMISSED.

Judges ZACHARY and HAMPSON concur.

Report per Rule 30(e).