

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA19-276

Filed: 17 December 2019

Yancey County, Nos. 17 CRS 50024-32, 224

STATE OF NORTH CAROLINA,

v.

SHAWN O'BRIAN RIDDLE, Defendant.

Appeal by Defendant from judgment entered 18 September 2017 by Judge Robert G. Horne in Mitchell (for Yancey) County Superior Court. Heard in the Court of Appeals 1 October 2019.

Attorney General Joshua H. Stein, by Assistant Attorney General Lisa B. Finkelstein, for the State-Appellee.

Meghan Adelle Jones for Defendant-Appellant.

COLLINS, Judge.

Defendant Shawn O'Brian Riddle appeals from the trial court's 18 September 2017 judgment entered upon his guilty plea. Defendant contends that the trial court erred by ordering him to pay restitution as part of its judgment. We agree, and vacate the portion of the judgment ordering Defendant to pay restitution.

I. Background

On 10 July 2017, Defendant was indicted in Yancey County Superior Court for two counts of felony breaking or entering a building (N.C. Gen. Stat. § 14-54(a)), six counts of felony breaking or entering a motor vehicle (N.C. Gen. Stat. § 14-56), two counts of felony larceny after breaking or entering a building (N.C. Gen. Stat. § 14-72(b)(2)), four counts of misdemeanor larceny (N.C. Gen. Stat. § 14-72(a)), two counts of misdemeanor possession of stolen goods and property (N.C. Gen. Stat. § 14-71.1), one count of felony possession of a stolen vehicle (N.C. Gen. Stat. § 20-106), one count of felony larceny of goods valued in excess of \$1000 (N.C. Gen. Stat. § 14-72(a)), and attaining habitual felon status (N.C. Gen. Stat. § 14-7.1).

Defendant pled guilty on 18 September 2017 to two counts of felony breaking or entering a building, six counts of felony breaking or entering a motor vehicle, two¹ counts of felony larceny after breaking or entering a building, one count of felony possession of a stolen vehicle, one count of felony larceny of goods valued in excess of \$1000, and attaining habitual felon status. The State dismissed a number of charges pending against Defendant in Yancey, Avery, and Mitchell Counties pursuant to the plea arrangement. The plea arrangement also contemplated the consolidation of the

¹ The transcript memorializing the plea arrangement appears to contemplate that Defendant pled guilty to four counts of felony larceny after breaking or entering a building. Because he was only indicted for two counts of that offense, Defendant could not plead guilty to more than two counts of that offense. Remand is not required, however, because the trial court ultimately entered judgment upon only one count.

charges to which Defendant pled guilty, and that Defendant would be sentenced, in the trial court's discretion, to two Class D felonies.

On the same date, the trial court accepted Defendant's plea and entered judgment thereupon. The trial court consolidated the charges into two Class D felonies, imposed two consecutive sentences of 125 to 162 months' imprisonment, and ordered Defendant to pay \$7871.50 in restitution to a woman named Lucy Wilson, for which Defendant became jointly and severally liable with two co-defendants with whom Defendant allegedly stole certain of Wilson's personal property.

Defendant sent a written notice of appeal to the Mitchell County Clerk of Court on 22 September 2017, four days after the trial court entered the judgment here at issue. Technically speaking, the judgment was entered in Yancey County by the Mitchell County judge, and as a result, Defendant failed to properly notice his appeal with the correct trial court within the 14-day period contemplated by North Carolina Rule of Appellate Procedure 4. However, Defendant has filed a petition for a writ of certiorari asking us nevertheless to review the merits of his appeal, and we exercise our authority under North Carolina Rule of Appellate Procedure 21 to grant Defendant's petition and proceed to the merits.

II. Discussion

Defendant's sole argument on appeal is that the trial court erred by ordering Defendant to pay restitution because (1) the State did not offer any competent

evidence to support its request for a restitution order and (2) Defendant did not stipulate to restitution.

In its brief, the State acknowledges that the only support it offered for its request for restitution was the prosecutor's statement that Defendant and his co-defendants broke into Wilson's home and stole her property, and also cites to case law setting forth that such a statement is insufficient to support a restitution order. *See State v. Davis*, 206 N.C. App. 545, 551-52, 696 S.E.2d 917, 921 (2010) ("the unsworn statement of the prosecutor is insufficient to support the amount of restitution ordered" (internal quotation marks, brackets, and citations omitted)). The State therefore concedes that the trial court erred by ordering Defendant to pay restitution.

The State argues, however, that Defendant's appeal is now moot because "the undersigned counsel has been in contact with the Yancey County District Attorney's office who has recently informed the undersigned counsel for the State that, after [Defendant]'s sentencing, a co-defendant paid the entire restitution of \$7,871.50 ordered to be paid jointly and severally by the co-defendants."

Even if it were competent evidence that Wilson had been paid the restitution for which Defendant was jointly and severally liable, the State's representation in its brief is not properly considered by this Court. N.C. R. App. P. 9 ("In appeals from the trial division of the General Court of Justice, review is solely upon the record on appeal, the verbatim transcript of proceedings, if one is designated, and any other

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items filed pursuant to this Rule 9.”). We therefore reject the State’s argument that Defendant’s appeal is moot.

III. Conclusion

We vacate the portion of the trial court’s 18 September 2017 judgment ordering Defendant to pay restitution.

VACATED.

Chief Judge McGEE and Judge HAMPSON concur.

Report per Rule 30(e).