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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-130

Filed: 7 January 2020

Davidson County, No. 17 CRS 051965-66

STATE OF NORTH CAROLINA

v.

KENNIE STEVEN MARTIN, Defendant.

Appeal by Defendant from judgments entered 12 September 2018 by Judge William A. Wood II in Davidson County Superior Court. Heard in the Court of Appeals 20 August 2019.

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

Stephen G. Driggers for defendant-appellant.

MURPHY, Judge.

Where an appellant fails to include necessary materials in the record on appeal such that we cannot verify the accuracy of his argument, we must dismiss the appeal as to any arguments relating to those materials. Additionally, a trial court's assessment of a defendant's court costs must reflect that defendant's interaction with the criminal justice system. When multiple criminal charges stem from the same

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underlying event or transaction and are adjudicated in the same hearing or trial, they are part of a single criminal case, and a trial court errs in assessing duplicative court costs even if it enters multiple judgments against the defendant.

Here, Defendant, Kennie Martin, presents us with an incomplete record on appeal and we dismiss two of his arguments accordingly. Defendant's only remaining argument on appeal is that the trial court erred in assessing two sets of court costs even though all his charges and convictions stem from the same underlying event and were adjudicated in a single criminal trial. We agree that the trial court erred, and reverse and remand Defendant's judgments.

BACKGROUND

Shortly after midnight on 8 April 2017, Defendant was driving a Suzuki motorcycle equipped with blue exterior lights along Sink Inn Road in Lexington. Two police officers in the area, believing Defendant's exterior lights constituted a violation of N.C.G.S. § 20-130.1(c), stopped Defendant beside a church. During the traffic stop, the officers discovered Defendant had been driving the motorcycle with an expired license and an invalid registration.

While the officers explained to Defendant that he would not be permitted to drive the motorcycle any further, they noticed the smell of alcohol on his breath. The officers told Defendant that they would conduct field sobriety tests and pat him down to ensure he was unarmed. As the officers attempted to pat Defendant down, he

withdrew from them and placed his hands in his jacket pockets. The officers warned Defendant repeatedly to remain in place, but Defendant continued withdrawing. Defendant then fled, running alongside the church away from the officers.

A pursuit ensued for less than one hundred feet before Defendant collided with the church's air conditioning unit. Defendant flipped on impact, landing face-first on the ground before one of the officers apprehended him by jumping onto his back. After a brief struggle, Defendant "kind of gave up" and admitted to the officers that he fled because he had cocaine and measuring scales in his pockets. The officers rolled Defendant over to discover that he had been shielding a green Crown Royal bag filled with a white powder. He also had multiple plastic bags of white powder in his pockets. Lab tests later confirmed Defendant's admission that the powder was cocaine.

Defendant was indicted for (1) possession with intent to sell or deliver cocaine, (2) trafficking in cocaine by transportation, (3) trafficking in cocaine by possession, and (4) possession of drug paraphernalia. At the conclusion of a jury trial, Defendant was found guilty of all offenses in the indictment. The trial court consolidated both trafficking convictions in a single judgment and imposed an active sentence of 35 to 51 months. In addition, the trial court assessed the following costs and fines "to be straight civil judgment:" \$352.50 in court costs, a \$5.00 service fee, a \$200.00 failure-to-appear fee, a \$20.00 installment fee, a \$10.00 jail fee, a \$60.00 appointment fee,

\$1,320.00 in attorney fees, and a \$50,000.00 fine. The trial court consolidated the remaining convictions, imposing a sentence of 6 to 17 months, to run consecutively with the trafficking sentence, and assessed another \$352.50 in court costs, a \$5.00 service fee, a \$200.00 failure-to-appear fee, and a \$20.00 installment fee “to be straight civil judgment.” Defendant timely appeals.

ANALYSIS

Defendant argues the trial court erred in three distinct manners, all pertaining to unauthorized sentencing and statutory interpretation, which we review de novo. N.C.G.S. § 15A-1446(d)(18) (2017); *In re Foreclosure of Vogler Realty, Inc.*, 365 N.C. 389, 392, 722 S.E.2d 459, 462 (2012).

A. Civil Judgment and Attorney Fees

Defendant contends the trial court erred when it entered judgment against him for attorney fees without personally notifying him of the opportunity to be heard, and also in ordering him to pay all monies—including the court costs, fees, and \$50,000.00 minimum fine mandated by N.C.G.S. § 90-95(h)(3)(a)—as a “straight civil judgment.” However, the State correctly notes that on the record before us we lack the ability to consider these arguments, which must be dismissed.

“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, 644-45 (1983). “When a necessary part of the record has been omitted, the appeal will be dismissed.”

State v. Harvell, 45 N.C. App. 243, 246, 262 S.E.2d 850, 852 (1980). Among other things, the record on appeal must include “a copy of the judgment, order, or other determination from which appeal is taken.” N.C. R. App. P. 9(a)(1)(h) (2019).

As to Defendant’s argument regarding attorney fees, the civil judgment ordering Defendant to pay attorney fees is not in the record. We must dismiss this argument. Similarly, we must dismiss Defendant’s argument that “the trial court lacked statutory authority to enter [Defendant’s criminal monetary obligation] as a civil judgment prior to default.” Nothing in the record shows the trial court ever docketed Defendant’s monetary obligations or court costs as a civil judgment, and without that necessary part of the record we must dismiss Defendant’s appeal as it relates to this issue.

B. Assessment of Costs

Defendant next contends the trial court erred in imposing “[t]he \$352.50 court cost, \$5.00 service fee, \$200.00 fail to appear fee and \$20.00 installment fee” totaling \$577.50 of costs on a per-judgment basis, rather than once for both judgments. This argument is based on Defendant’s interpretation of N.C.G.S. § 7A-304(a), which reads: “In every criminal case in the superior or district court, wherein the defendant is convicted, or enters a plea of guilty or nolo contendere, or when costs are assessed against the prosecuting witness, the following costs shall be assessed and collected.” N.C.G.S. § 7A-304(a) (2017). Defendant contends that the term “criminal case,” as

used in N.C.G.S. § 7A-304(a), encompasses all charges for which he was tried, and, consequently, that he should have been assessed only one set of costs. Since the parties briefed this case, we have published an opinion that squarely resolves this issue, and we rely on it in holding for Defendant. *State v. Rieger*, 833 S.E.2d 699 (N.C. Ct. App. 2019).

In addressing this argument in *Rieger*, we analyzed the text of this statute and its history as well as the spirit of the act and what it seeks to accomplish. *Id.* at 702.

We concluded:

the intent of the General Assembly when it chose to require court costs “in every criminal case” was to have those costs be proportional to the costs that this “criminal case” imposed on the court system. In other words, court costs are meant to reflect the financial burden that a defendant’s interaction with the justice system creates.

. . .

[W]hen criminal charges are separately adjudicated, court costs can be assessed in the judgment for each charge—even if the charges all stem from the same underlying event or transaction. . . . [However, w]hen multiple criminal charges arise from the same underlying event or transaction and are adjudicated together in the same hearing or trial, they are part of a single “criminal case” for purposes of N.C.[G.S.] § 7A-304. In this situation, the trial court may assess costs only once, even if the case involves multiple charges that result in multiple, separate judgments.

Id. at 702-03.

As in *Rieger*, both judgments in this case stemmed from the same underlying event and were adjudicated together in the same trial, which renders them part of a single criminal case for purposes of N.C.G.S. § 7A-304. Applying our holding from *Rieger* to this case, we conclude the trial court erred in assessing costs totaling \$577.50 twice in Defendant's single criminal case, despite assessing those costs in two separate judgments. We vacate the judgment in Case No. 17 CRS 051966—the second judgment the trial court entered—and remand for the trial court to enter a new judgment that does not include court costs.

CONCLUSION

Defendant did not submit necessary parts of the record for us to review his arguments regarding the trial court's assessment of attorney fees or its purported docketing of his criminal monetary obligations as a civil judgment. Defendant's arguments as to those issues are dismissed. Although it did so across two judgments, the trial court erred in assessing costs twice in Defendant's single criminal case.

DISMISSED IN PART; VACATED AND REMANDED IN PART.

Chief Judge MCGEE and Judge STROUD concur.

Report per Rule 30(e).