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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-599

Filed: 3 March 2020

Iredell County, No. 13 CRS 56739

STATE OF NORTH CAROLINA

v.

LAMONT ANDRE MCKOY, Defendant.

Appeal by Defendant from judgment entered 8 November 2017 by Judge Julia Lynn Gullett in Superior Court, Iredell County. Heard in the Court of Appeals 23 April 2019.

*Attorney General Joshua H. Stein, by Assistant Attorney General Mary S. Crawley, for the State.*

*Guy J. Loranger for Defendant.*

McGEE, Chief Judge.

Lamont Andre McKoy (“Defendant”) tendered an *Alford* plea to felony charges of possession of stolen goods and obtaining property by false pretenses on 8 November 2017. As part of his written plea agreement with the State, Defendant signed a

STATE V. MCKOY

*Opinion of the Court*

stipulation “to restitution to the party[] in the amounts set out on ‘Restitution Worksheet, Notice and Order (Initial Sentencing) (AOC-CR-611).” The prosecutor confirmed the stipulation in open court at Defendant’s plea hearing, as follows:

[PROSECUTOR]: Does [Defendant] stipulate and agree that the amount of restitution that the State is requesting is \$5,000, understanding that’s going to be a civil judgment against him?

[DEFENSE COUNSEL]: Yes.

The trial court accepted Defendant’s plea, consolidated his offenses for judgment, and sentenced him to active prison term of sixteen to twenty-nine months consecutive to any sentence he was then serving. After announcing Defendant’s sentence, the trial court stated: “And the Court does enter a civil judgment for the restitution in the amount of \$5,000. The Court is not going to enter a civil judgment on the attorney fees.” In its criminal judgment and commitment signed 8 November 2017, the trial court waived court costs and included a directive that “REST VICTIMS TO BE A CIVIL JUDGMENT.”

Defendant filed a *pro se* notice of appeal on 20 November 2017, designating for appeal “the Judgment entered on November 8, 2017 in case number 13 CRS 056739.” The notice asserts that Defendant asked his appointed counsel to inform the trial court of his wish to appeal on the date of sentencing. The trial court signed appellate entries on 19 January 2018 appointing the Appellate Defender to represent Defendant.

STATE V. MCKOY

*Opinion of the Court*

In his sole argument on appeal, Defendant contends the trial court erred by ordering the \$5,000 restitution award to be entered as a civil judgment against him. Due to defects in Defendant's *pro se* notice of appeal, his appellate counsel also filed a petition for writ of certiorari on 3 October 2018 as an alternative basis to review the judgment entered upon Defendant's *Alford* plea. *See* N.C.R. App. P. 21(a)(1) (allowing review by writ of certiorari "when the right to prosecute an appeal has been lost by failure to take timely action"). The State filed a motion to dismiss Defendant's appeal on 2 November 2018.

The State argues, in part, that this Court lacks jurisdiction to consider Defendant's appeal because the record does not include any civil judgment ordering Defendant to pay restitution. Although the judgment and commitment entered by the trial court on 8 November 2017 includes a *directive* for entry of a civil judgment, no such civil judgment appears in the record on appeal. Absent entry of the civil judgment, we are without jurisdiction to review it. *See State v. Jacobs*, 361 N.C. 565, 566, 648 S.E.2d 841, 842 (2007) (*per curiam*) ("We conclude that because there is no civil judgment in the record ordering defendant to pay attorney fees, the Court of Appeals had no subject matter jurisdiction on this issue."); *see also* N.C.G.S. § 1A-1, Rule 58 (2017) (providing that a civil "judgment is entered when it is reduced to writing, signed by the judge, and filed with the clerk of court").

Defendant seeks to distinguish the instant case from *Jacobs* by claiming he

STATE V. MCKOY

*Opinion of the Court*

does not seek review of the civil judgment itself, but of the provision of his criminal judgment that “REST VICTIMS TO BE A CIVIL JUDGMENT.” Defendant argues that he is simply asking this Court to “determine whether the trial court erred by ordering the \$5,000 restitution order to be entered as a civil judgment against him.” However, because there is no record evidence that any civil judgment for restitution has been entered against Defendant, he cannot demonstrate any prejudicial error. Further, assuming, *arguendo*, a civil judgment for restitution has been entered against Defendant, granting Defendant the relief he seeks here would have no impact on that judgment. Therefore, Defendant cannot demonstrate that the trial court’s directive to enter a civil judgment prejudiced him or that, assuming prejudicial error, any harm from such error will be remedied through this Court granting the relief he seeks. Therefore, we deny Defendant’s petition for writ of certiorari and dismiss his appeal.

DISMISSED.

Judges TYSON and BERGER concur.

Report per Rule 30(e).