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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA20-260

Filed: 17 November 2020

Rutherford County, No. 18 CRS 53536, 18 CRS 53538, 19 CRS 341

STATE OF NORTH CAROLINA

v.

JOSEPH WILLIS, III

Appeal by defendant from judgment entered 24 July 2019 by Judge James W. Morgan in Superior Court, Rutherford County. Heard in the Court of Appeals 3 November 2020.

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

Stephen G. Driggers, for defendant-appellant.

STROUD, Judge.

Defendant appeals from a civil judgment imposing \$1,200 in attorney's fees where he was not given an opportunity to be heard before the civil judgment was entered. Defendant filed a petition for writ of certiorari due to his notice of appeal being defective. In our discretion, we grant his petition for writ of certiorari and vacate and remand his civil judgment for attorney's fees.

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I. Background

Defendant attended a drug and alcohol rehabilitation class while incarcerated at Rutherford Correctional Center. Defendant got into a dispute and was placed in a holding cell. Defendant removed his clothes and placed them in a toilet in the cell, and the room started to flood. Defendant dipped a towel in the water containing his urine and flung it on the warden and a sergeant. Several hours later, officers entered the holding cell and secured Defendant.

Defendant was charged with two counts of malicious conduct by a prisoner and attaining the status of habitual felon. Defendant was convicted on both counts of malicious conduct by a jury, and he pled guilty to attaining the status of habitual felon. Defendant was sentenced accordingly and ordered to pay attorney's fees of \$1,200, but the trial court did not conduct a colloquy with Defendant about the fees. Defendant filed a *pro se* handwritten notice of appeal which stated, "I want to appeal my trial hearing for two counts of malicious conduct by prisoner. . . . I want to appeal because of lack of evidence & false testimony in my case, the case numbers on my case are as follows 18CR053538 & 18CR053536 & 19CRS000341." Defendant's *pro se* notice of appeal did not specify the particular judgment from which he was appealing.

II. Petition for Writ of Certiorari

After appointment of appellate counsel, Defendant filed a petition for writ of certiorari noting that his notice of appeal “was defective and did not meet the requirements of N.C. R. App. P. 3 because it did not certify service and did not designate the Court to which appeal was taken.” The State argues dismissal is the appropriate result where, “[a]s Petitioner recognizes, his *pro se* written notice of appeal was defective. It was not signed, it does not reflect service, and it did not designate the court to which appeal was taken.”

This Court routinely allows a petition for a writ of certiorari to review a criminal judgment where the defendant failed to timely appeal. . . .

It is less common for this Court to allow a petition for a writ of certiorari where a litigant failed to timely appeal a civil judgment. But, as explained below, [Defendant’s] argument on the issue of attorneys’ fees is meritorious.

State v. Friend, 257 N.C. App. 516, 519, 809 S.E.2d 902, 905 (2018) (citations omitted).

In the present case, Defendant’s petition shows that error was committed below, and the State concedes “should this Court issue a writ of certiorari to review the 24 July 2019 judgment for \$1,200.00 in attorneys’ fees, the State agrees that it must be vacated and the case remanded to the trial court for further proceedings.” In our discretion, we grant Defendant’s petition.

III. Attorney’s Fees

Defendant argues, “a trial court must afford a defendant notice and an opportunity to be heard on the issue of attorney’s fees. The trial court erred by

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imposing \$1,200 in attorney's fees without giving [Defendant] an opportunity to be heard as to the final amount." (Original in all caps.) We agree.

In certain circumstances, trial courts may enter civil judgments against convicted indigent defendants for the attorneys' fees incurred by their court-appointed counsel. See N.C. Gen. Stat. § 7A-455. By statute, counsel's fees are calculated using rules adopted by the Office of Indigent Defense Services, but trial courts awarding counsel fees must take into account factors such as "the nature of the case, the time, effort, and responsibility involved, and the fee usually charged in similar cases." N.C. Gen. Stat. § 7A-455(b). Before imposing a judgment for these attorneys' fees, the trial court must afford the defendant notice and an opportunity to be heard.

State v. Friend, 257 N.C. App. at 522, 809 S.E.2d at 906 (citations omitted). The State acknowledges, "[i]t appears Defendant did not receive due notice and opportunity to be heard before the civil judgment for \$1,200.00 in attorneys' fees was entered against him pursuant to Section 7A-455(b)."

IV. Conclusion

Accordingly, Defendant's 24 July 2019 civil judgment for \$1,200.00 in attorney's fees is vacated, and this case is remanded to the trial court for further proceedings on this issue.

VACATED AND REMANDED.

Judges BRYANT and ARROWOOD concur.

Report per Rule 30(e).