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IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-15

No. COA20-314

Filed: 2 February 2021

Jones County, No. 17 CRS 50292

STATE OF NORTH CAROLINA

v.

LINDA ELIZABETH MURRELL.

Appeal by Defendant from judgments entered 31 July 2019 by Judge Paul M. Quinn in Jones County Superior Court. Heard in the Court of Appeals 13 January 2021.

Attorney General Joshua H. Stein, by Assistant Attorney General Anne Goco Kirby, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Emily Holmes Davis, for Defendant.

COLLINS, Judge.

¶ 1 As the trial court failed to fully comply with the mandates of N.C. Gen. Stat. § 15A-1242 before allowing Defendant to represent herself, we vacate the judgments entered 31 July 2019 and remand for a new trial.

I. Factual Background

¶ 2 Defendant was indicted on 13 November 2017 on charges of manufacturing

marijuana and maintaining a dwelling “for keeping and selling” marijuana. Defendant was appointed an attorney, Terence Barber, on 21 July 2017, but Barber was permitted to withdraw as Defendant’s counsel on 5 March 2018. George D. Norris was appointed to represent Defendant by order entered the same day.

¶ 3 At a hearing on 22 January 2019, Norris informed the trial court that Defendant had refused the State’s plea offer. Norris then informed the trial court that Defendant “would ask to have . . . an opportunity to hire private counsel, if the State would keep that offer open. She wants to go out and hire an attorney[,]” which Norris stated was “probably a good idea at this point.” Defendant signed a Form AOC-CR-227, “Waiver of Counsel,” on 22 January 2019, upon which Defendant indicated she waived “assigned counsel only” and did not indicate that she waived “all assistance of counsel.” The State requested that Defendant’s trial date remain set for 13 May 2019 and indicated that the plea offer would only remain open until “the close of business this week,” in light of the fact that Defendant was indicted in 2017. The trial court granted Norris’ motion to withdraw as Defendant’s counsel, by order signed 26 February 2019 and entered 8 March 2019.

¶ 4 When Defendant’s case came on for trial on 29 July 2019, Defendant had not retained an attorney. The trial moved forward with Defendant acting pro se without inquiry by the State or the trial court. After the jury was empaneled, the trial court informed the jury that following the State’s opening argument, Defendant “may or

may not make an opening statement. She can make it shortly after [the State] does or before she presents her case in chief.” The trial was conducted with Defendant representing herself. The jury returned verdicts of guilty on both counts. Defendant appealed.

II. Jurisdiction

¶ 5

Defendant filed a petition for writ of certiorari in the event we determine her notice of appeal is insufficient to confer jurisdiction upon this Court. Defendant’s hand-written notice of appeal, filed with the Jones County Clerk of Superior Court on 7 August 2019, does not indicate that her appeal is directed to this Court and, therefore, is in technical violation of Rule 4 of our Rules of Appellate Procedure. N.C. R. App. P. 4(b) (“The notice of appeal required to be filed and served by . . . this rule shall specify . . . the court to which appeal is taken[.]”). However, an appellant’s “failure to designate this Court in its notice of appeal is not fatal to the appeal where the [appellant’s] intent to appeal can be fairly inferred and the [appellees] are not misled by the [appellant’s] mistake.” *Phelps Staffing, LLC v. S.C. Phelps, Inc.*, 217 N.C. App. 403, 410, 720 S.E.2d 785, 791 (2011) (citation omitted). Here, as Defendant’s notice of appeal plainly indicates her intent to appeal and this Court is the only court with jurisdiction to hear Defendant’s appeal, “it can be fairly inferred [D]efendant intended to appeal to this Court.” *State v. Ragland*, 226 N.C. App. 547, 553, 739 S.E.2d 616, 620 (2013). Moreover, the State does not suggest in any way

that it was prejudiced by Defendant’s technical violation. Accordingly, Defendant’s mistake in failing to name this Court in her notice of appeal does not warrant dismissal of her appeal for lack of jurisdiction. *Id.* at 552-53, 739 S.E.2d at 620; *see also State v. Sitosky*, 238 N.C. App. 558, 561, 767 S.E.2d 623, 624-25 (2014); *Phelps Staffing, LLC*, 217 N.C. App. at 410, 720 S.E.2d at 791. We thus dismiss Defendant’s petition for writ of certiorari as moot.

III. Discussion

¶ 6 As an initial matter, Defendant did not object at trial to the trial court’s failure to satisfy the requirements of N.C. Gen. Stat. § 15A-1242. However, “when a trial court acts contrary to a statutory mandate and a defendant is prejudiced thereby, the right to appeal the court’s action is preserved, notwithstanding defendant’s failure to object at trial.” *State v. Ashe*, 314 N.C. 28, 39, 331 S.E.2d 652, 659 (1985) (citation omitted). We therefore address the merits of Defendant’s appeal.

¶ 7 Defendant argues that she “is entitled to a new trial because the trial court failed to comply with the mandates of N.C. Gen. Stat. § 15A-1242 before allowing [her] to represent herself, the record did not show a knowing or voluntary waiver of counsel, and the waiver form did not cure the defect[.]” The State concedes, and we agree, “that a new trial is required due to the trial court’s failure to fully comply with the mandates of N.C. Gen. Stat. § 15A-1242 before allowing [D]efendant to represent herself.”

¶ 8

“Before allowing a defendant to waive in-court representation by counsel, . . . the trial court must [e]nsure that constitutional and statutory standards are satisfied.” *State v. Thomas*, 331 N.C. 671, 673, 417 S.E.2d 473, 475 (1992). Thus, a trial court “must determine whether the defendant knowingly, intelligently, and voluntarily waives the right to in-court representation by counsel.” *Id.* at 674, 417 S.E.2d at 476 (citations omitted). A thorough inquiry into the three substantive elements of N.C. Gen. Stat. § 15A-1242 satisfies constitutional requirements. *State v. Fulp*, 355 N.C. 171, 174-75, 558 S.E.2d 156, 159 (2002).

N.C. Gen. Stat. § 15A-1242 provides:

A defendant may be permitted at his election to proceed in the trial of his case without the assistance of counsel only after the trial judge makes thorough inquiry and is satisfied that the defendant:

- (1) Has been clearly advised of his right to the assistance of counsel, including his right to the assignment of counsel when he is so entitled;
- (2) Understands and appreciates the consequences of this decision; and
- (3) Comprehends the nature of the charges and proceedings and the range of permissible punishments.

N.C. Gen. Stat. § 15A-1242 (2019).

¶ 9

“[T]he critical issue is whether the statutorily required information has been communicated in such a manner that defendant’s decision to represent himself is

knowing and voluntary.” *State v. Carter*, 338 N.C. 569, 583, 451 S.E.2d 157, 164 (1994). If the trial court fails “to make the inquiry mandated by [N.C. Gen. Stat.] § 15A-1242 before permitting the defendant to proceed to trial without counsel, the defendant is entitled to a new trial.” *State v. Dunlap*, 318 N.C. 384, 389, 348 S.E.2d 801, 805 (1986) (citations omitted). “We review the question of whether the trial court complied with N.C. Gen. Stat. § 15A-1242 *de novo*.” *State v. Frederick*, 222 N.C. App. 576, 581, 730 S.E.2d 275, 279 (2012) (citation omitted).

¶ 10 As argued by Defendant and conceded by the State, at no point did the trial court conduct an inquiry to determine whether Defendant understood and appreciated the consequences of her decision to proceed without the assistance of counsel, *see* N.C. Gen. Stat. § 15A-1242(2), or comprehended the nature of the charges and proceedings and the range of permissible punishments, *see* N.C. Gen. Stat. § 15A-1242(3). The trial court thus failed to satisfy the requirements of N.C. Gen. Stat. § 15A-1242. Accordingly, Defendant’s waiver of counsel was not knowing, intelligent, or voluntary, *Thomas*, 331 N.C. at 674, 417 S.E.2d at 476, and failed to satisfy constitutional requirements. *Carter*, 338 N.C. at 583, 451 S.E.2d at 164. Defendant is therefore entitled to a new trial.

IV. Conclusion

¶ 11 As the trial court failed to comply with the requisite constitutional and statutory mandates before allowing Defendant to represent herself, we vacate

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Opinion of the Court

Defendant's convictions and the trial court's judgments entered upon those convictions, and remand for a new trial.

NEW TRIAL.

Judges DIETZ and ZACHARY concur.

Report per Rule 30(e).