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IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-117

No. COA20-407

Filed 6 April 2021

Pitt County, No. 18 CRS 52469

STATE OF NORTH CAROLINA

v.

TANESHA LAVELLE CRANDLE

Appeal by defendant from judgment entered 30 September 2019 by Judge Jeffery B. Foster in Pitt County Superior Court. Heard in the Court of Appeals 10 February 2021.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Kimberley A. D'Arruda, for the State.

Linda B. Weisel for defendant-appellant.

ZACHARY, Judge.

¶ 1

Defendant Tanesha Lavelle Crandle appeals from the judgment entered upon her plea of guilty to the felony charge of obtaining property by false pretenses. Defendant contends that the trial court committed reversible error by (1) sentencing her to 48 months of supervised probation in an intermediate-punishment judgment without making a finding that a longer probationary period than that prescribed by statute was necessary; (2) sentencing Defendant to a special condition of probation

that violated her rights to notice, hearing, and representation by counsel, failed to consider her ability to pay, and exceeds the maximum allowable period of confinement in a local confinement facility, in violation of N.C. Gen. Stat. § 15A-1343(a1)(3) (2019); (3) ordering Defendant to pay an amount of restitution not supported by any evidence; and (4) ordering a secured anticipatory bond. After careful review, we vacate the judgment and remand to the trial court for resentencing.

Background

¶ 2

On 13 November 2018, a Pitt County grand jury indicted Defendant for obtaining property by false pretenses, alleging that Defendant “used her niece’s, [A.C.]¹, name and social security number to set up a Greenville Utilities account and have [A.C.] listed as being financially responsible for the account as though she had obtained her niece’s consent to do so when in fact she had not.” Defendant and the State entered into a plea arrangement, pursuant to the terms of which Defendant agreed to plead guilty to obtaining property by false pretenses, and the State agreed not to object to sentencing in the mitigated range or to oppose a probationary sentence.

¶ 3

On 30 September 2019, Defendant pleaded guilty as agreed. At the sentencing hearing, the prosecutor summarized the factual basis for the plea as follows: on 2

¹ To protect the identity of the victim, we refer to her by her initials.

January 2013, Defendant “opened up an account online for utilities” using the name and social security number of her niece, [A.C.], and listed [A.C.] “as being financially responsible for the account.” Approximately five years later, on 28 February 2018, [A.C.] “came in to set up her own Greenville Utilities account, and was told that she would have to pay \$1,181.89 . . . which was the outstanding balance on [Defendant’s] account, before she could open up her own account.” [A.C.] did not give Defendant permission to use her information to set up Defendant’s account. [A.C.] paid the outstanding balance—\$1,181.89—in order to set up her own utilities account.

¶ 4

The prosecutor further stated:

Your Honor, our office has spoken with [A.C.] She said this is not the first time. This Defendant has done this to other members of the family. She’s also set up other things in [A.C.]’s name. [A.C.] does not give permission for [Defendant] to do that. And she keeps finding it popping up on her credit, that she has outstanding balance or outstanding credit issues because [Defendant] is using her name and Social Security number. She did ask, the only thing that she wants is for [Defendant] to pay her the \$1,181.89, and did not wish to be present for the plea today.

Defense counsel informed the trial court that Defendant graduated high school in 1998 and that she was gainfully employed.

¶ 5

The trial court sentenced Defendant to a term of 11 to 23 months in the custody of the North Carolina Division of Adult Correction, suspended that sentence, and placed Defendant on 48 months of supervised probation. The trial court also ordered

that Defendant pay restitution in the amount of \$1,181.89 to A.C., \$180 in attorney's fees, and \$542.50 in court costs. Finally, the trial court ordered that Defendant comply with the following special conditions of probation:

She is to report to the Pitt County jail Monday, December 23rd, and she is to remain incarcerated until noon, Thursday, December 26th.

. . . .

Beginning November 1st, she is to pay \$100.00 per month toward this restitution, until such time as the restitution is paid. Then the remaining monies can be paid pursuant to a payment to be established by her probation officer. If she misses two consecutive months of payments, she is to be taken into custody and serve seven days in jail. And for each time she misses two payments, she is to be taken into custody and serve seven days in jail, okay?

. . . .

In the event she fails to show up for that active jail time Christmas in Pitt County, an order for arrest is to issue, and she is to be placed under a \$100,000.00 secure bond, and held until such time as the probation violation can be heard.

Thereafter, the trial court entered its written Judgment Suspending Sentence. On 7 October 2019, Defendant timely filed written notice of appeal.

Discussion

¶ 6

Defendant contends that the trial court committed reversible error by (1) sentencing her to 48 months of supervised probation in an intermediate punishment judgment without finding that a probationary period of longer than 18 to 36 months

was necessary, in violation of N.C. Gen. Stat. § 15A-1343.2(d)(4); (2) sentencing Defendant to a special condition of probation that violated her rights to notice, hearing, and representation by counsel, failed to consider her ability to pay, and exceeds the maximum allowable period of confinement in a local confinement facility, in violation of N.C. Gen. Stat. § 15A-1343(a1)(3); (3) ordering Defendant to pay an amount of restitution not supported by any evidence; and (4) ordering a secured anticipatory bond.

I. Appellate Jurisdiction

¶ 7

“In North Carolina, a defendant’s right to appeal in a criminal proceeding is purely a creation of state statute.” *State v. Pimental*, 153 N.C. App. 69, 72, 568 S.E.2d 867, 869, *disc. review denied*, 356 N.C. 442, 573 S.E.2d 163 (2002). Section 15A-1444 of our General Statutes provides, in relevant part, that:

(a1) A defendant who has . . . entered a plea of guilty or no contest to a felony, is entitled to appeal as a matter of right the issue of whether his or her sentence is supported by evidence introduced at the . . . sentencing hearing only if the minimum sentence of imprisonment does not fall within the presumptive range[.] . . . Otherwise, the defendant is not entitled to appeal this issue as a matter of right but may petition the appellate division for review of this issue by writ of certiorari.

(a2) A defendant who has entered a plea of guilty or no contest to a felony or misdemeanor in superior court is entitled to appeal as a matter of right the issue of whether the sentence imposed:

(1) Results from an incorrect finding of the defendant's prior record level[.] . . . ;

(2) Contains a type of sentence disposition that is not authorized . . . or;

(3) Contains a term of imprisonment that is for a duration not authorized[.]

. . . .

(e) Except as provided in subsections (a1) and (a2) of this section . . . the defendant is not entitled to appellate review as a matter of right when he has entered a plea of guilty or no contest to a criminal charge in the superior court, but he may petition the appellate division for review by writ of certiorari. . . .

. . . .

(g) Review by writ of certiorari is available when provided for by this Chapter, by other rules of law, or by rule of the appellate division.

N.C. Gen. Stat. § 15A-1444(a1)–(a2), (e), (g).

Defendant's appeal does not fall squarely within the limited circumstances enumerated in § 15A-1444(a1) and (a2), and we therefore do not have jurisdiction to review her claims on direct appeal. However, § 15A-1444(e) grants defendants who have pleaded guilty the right to petition our Court for a writ of certiorari. *See State v. Stubbs*, 368 N.C. 40, 42–43, 770 S.E.2d 74, 76 (2015); *see also State v. Jones*, 253 N.C. App. 789, 796–97, 802 S.E.2d 518, 523 (2017) (issuing writ of certiorari to review appeal from judgment entered upon the defendant's guilty plea where the defendant's

appeal did not fall within the enumerated circumstances of § 15A-1444(a1) and (a2)). Defendant has not done so; however, we have the discretion to issue a writ of certiorari *ex mero motu* to review Defendant's claims despite the fact that she has no appeal of right from the judgment entered upon her plea of guilty. *See State v. SanMiguel*, 74 N.C. App. 276, 277–78, 328 S.E.2d 326, 328 (1985).

¶ 9 Thus, although Defendant has not petitioned for a writ of certiorari, we exercise our discretion *ex mero motu* to treat Defendant's brief as a petition for writ of certiorari, and to issue the writ as to the first and third issues raised in Defendant's brief because we determine those issues to be meritorious. *See id.*; *see also State v. Murphy*, 261 N.C. App. 78, 82, 819 S.E.2d 604, 606 (2018) (issuing writ of certiorari in part to review restitution order). We note, also, that the State is not prejudiced by the issuance of a writ of certiorari to review these two issues. Indeed, the State has not filed a motion to dismiss Defendant's appeal for lack of appellate jurisdiction, has not raised the issue of lack of jurisdiction in its brief, and has conceded error with regard to the first and third issues raised in Defendant's brief.

¶ 10 Accordingly, because we determine Defendant's arguments regarding the length of her probationary sentence and the amount of restitution to be meritorious, we exercise our discretion to issue the writ of certiorari in order to reach the merits of those portions of Defendant's appeal.

II. 48-Month Probationary Sentence

¶ 11 Defendant first argues that the trial court erred by sentencing her to 48 months of supervised probation without finding that a probationary period longer than that prescribed by N.C. Gen. Stat. § 15A-1343.2(d)(4) was necessary. The State concedes that “the trial court erred when it sentenced [D]efendant to a probationary period of 48 months without making a specific factual finding on the record that the longer period of probation was necessary.” We agree, and accordingly remand for resentencing.

¶ 12 The standard of review is clear: “[a]lleged statutory errors are questions of law,” reviewed de novo on appeal. *State v. Mackey*, 209 N.C. App. 116, 120, 708 S.E.2d 719, 721, *disc. review denied*, 365 N.C. 193, 707 S.E.2d 246 (2011).

¶ 13 Section 15A-1343.2(d)(4) of the North Carolina General Statutes provides that a felony offender who is sentenced to intermediate punishment shall be placed on probation for no less than 18 and no more than 36 months, unless the trial court enters specific findings that a longer or shorter period of probation is necessary. N.C. Gen. Stat. § 15A-1343.2(d)(4). This Court has remanded for resentencing where the trial court violated § 15A-1343.2(d) by ordering a longer period of probation than the statute permits without making the requisite finding that a longer period was necessary. *See State v. Sale*, 232 N.C. App. 662, 663–64, 754 S.E.2d 474, 476 (2014) (remanding for the trial court to reduce the defendant’s probationary period to a term within the statutorily mandated range, or to enter specific findings as to why a longer

period of probation was necessary); accord *State v. Branch*, 194 N.C. App. 173, 179, 669 S.E.2d 18, 22 (2008); *State v. Mucci*, 163 N.C. App. 615, 624–25, 594 S.E.2d 411, 418 (2004); *State v. Love*, 156 N.C. App. 309, 317–18, 576 S.E.2d 709, 714 (2003).

¶ 14 Defendant further contends that “[t]his Court should order [that the trial court conduct] an unrestricted new sentencing hearing” on remand, rather than remanding solely for correction of this error. We find no support for Defendant’s contention in our case law. Thus, we remand for the trial court (1) to enter specific findings indicating why a longer probationary period is necessary, or (2) to reduce Defendant’s probationary period to a length of time authorized by § 15A-1343.2(d)(4).

III. Amount of Restitution

¶ 15 Defendant next asserts, and the State concedes, that the trial court erred by ordering an amount of restitution not supported by the evidence presented at the plea hearing. Again, we agree and remand for a hearing on the issue of restitution.

¶ 16 It is manifest “that a trial court’s award of restitution must be supported by competent evidence in the record[.]” *State v. Buchanan*, 108 N.C. App. 338, 341, 423 S.E.2d 819, 821 (1992) (citation omitted), “adduced at trial or at sentencing[.]” *State v. Replogle*, 181 N.C. App. 579, 584, 640 S.E.2d 757, 761 (2007) (citation omitted). Neither a restitution worksheet alone, *State v. Dallas*, 205 N.C. App. 216, 224, 695 S.E.2d 474, 479, *disc. review denied*, 364 N.C. 604, 703 S.E.2d 737 (2010), nor the “unsworn statement of the prosecutor” can support the amount of restitution ordered,

State v. Shelton, 167 N.C. App. 225, 233, 605 S.E.2d 228, 233 (2004) (citation omitted).

¶ 17 Here, the State concedes in its brief “that the only evidence of the total amount of pecuniary loss to the victim that was before the trial court was in the form of an unsworn statement by the prosecutor during the sentencing hearing that [D]efendant’s niece paid \$1,181.89 to the utility company to pay [D]efendant’s outstanding balance so she could open her own utility account,” together with a restitution worksheet. We therefore vacate the order of restitution, with instructions that on remand, the trial court “rehear the issue of restitution.” *Replogle*, 181 N.C. App. at 584, 640 S.E.2d at 761.

Conclusion

¶ 18 We hold that the trial court erred by sentencing Defendant to a 48-month probationary period without making a specific finding that a longer probationary period than that provided by statute was necessary, and by ordering an amount of restitution that was not supported by competent evidence. Accordingly, we vacate the judgment below and remand for resentencing consistent with this opinion.

VACATED AND REMANDED FOR RESENTENCING.

Judge DIETZ concurs.

Judge GRIFFIN concurs in the result.

Report per Rule 30(e)