

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-201

No. COA20-554

Filed 4 May 2021

Wilson County, No. 18 CRS 050092

STATE OF NORTH CAROLINA,

v.

VINCENT KING, Defendant.

Appeal by Defendant from judgment entered 17 January 2020 by Judge Jeffery B. Foster in Wilson County Superior Court. Heard in the Court of Appeals 24 February 2021.

*Attorney General Joshua H. Stein, by Special Attorney General Lisa Bradley, for the State.*

*Gillette Law Firm PLLC, by Jeffrey William Gillette, for Defendant-Appellant.*

WOOD, Judge.

¶ 1

On January 15, 2020, Vincent King (“Defendant”) was convicted of assault with a deadly weapon inflicting serious injury and sentenced by the trial court. On January 17, 2020, Defendant was ordered to pay \$1,500.00 in attorney fees. Defendant filed a notice of appeal but failed to comply with our rules of appellate procedure. Therefore, this Court is deprived of jurisdiction to consider the merits of

Defendant's appeal. Defendant filed a petition for writ of certiorari ("PWC"), requesting this Court exercise its discretion and allow appellate review. Subsequently, Defendant filed a motion to amend the record on appeal and a motion to amend his PWC. The State filed a motion to dismiss Defendant's appeal due to Defendant's failure to comply with the rules of appellate procedure. After careful review, we grant Defendant's motion to amend his PWC, deny Defendant's PWC, deny Defendant's motion to amend his record on appeal, and grant the State's motion to dismiss.

### **I. Background**

¶ 2

On January 9, 2018, Officer Eric Hayes ("Officer Hayes") of the Wilson Police Department responded to a domestic disturbance call at Defendant's residence. Defendant resided with his girlfriend, Tia Gray ("Gray"). When Officer Hayes arrived at the residence, he heard yelling coming from the home. Cassandra Gray, Gray's mother ("Ms. Gray"), let Officer Hayes inside the residence. Officer Hayes observed blood on the living room floor. He also saw Gray in the living room. Gray had several severe lacerations on both sides of her face and was crying out in pain. Gray's injuries on both sides of her face were so deep that Officer Hayes could see the "fat layer" under her skin. Defendant was also present in the living room. Defendant had blood all over his hands, but he was not injured. Officer Hayes noticed a broken bottle on the living room floor.

¶ 3

Officer Hayes talked with both Gray and Ms. Gray to determine the cause of Gray's injuries. Defendant was present as Officer Hayes asked the Grays questions. As a result of these conversations, Officer Hayes arrested Defendant for assaulting Gray. During his arrest, Defendant made two statements. One was directed to Ms. Gray: "I couldn't hit that gorilla with my fist, she's too strong. I had to hit her with a bottle." Defendant's second statement was directed to Officer Hayes: "She was talking to another man in front of me. She deserved it."

¶ 4

Officer Hayes then transported Defendant to the police station. Defendant did not make any other statements. On June 4, 2018, Defendant was indicted on one count of assault with a deadly weapon inflicting serious injury. On November 5, 2019, Defendant filed a notice of defense asserting the defenses of self-defense and accident.

¶ 5

Defendant's trial occurred in January 2020. The jury returned a guilty verdict for assault with a deadly weapon inflicting serious injury on January 15, 2020. On the same day, Defendant was sentenced to a minimum term of twenty-six months and a maximum of forty-four months, with credit for twenty-four days served prior to trial. In addition, the trial court ordered all costs, including attorney fees, which were undetermined at the time of his sentencing, to be docketed as a civil judgment against Defendant. On January 17, 2020, the trial court entered a judgment ordering Defendant to pay \$1,500.00 in attorney fees.

¶ 6

Defendant filed a *pro se* notice of appeal on January 22, 2020. Because his

appeal did not comply with our rules of appellate procedure, Defendant filed a PWC on August 31, 2020. On September 10, 2020, Defendant filed a motion to amend the record on appeal and a motion to amend his PWC. The State filed a motion to dismiss Defendant's appeal on September 14, 2020.

## II. Analysis

¶ 7

We observe that “the rules of this Court, governing appeals, are mandatory and not directory” in resolving disputes. *Pruitt v. Wood*, 199 N.C. 788, 789, 156 S.E. 126, 127 (1930) (citations omitted). Consequently, we have noted that the “failure of the parties to comply with the rules, and failure of the appellate courts to demand compliance therewith, may impede the administration of justice.” *Dogwood Dev. & Mgmt. Co., LLC v. White Oak Transp. Co.*, 362 N.C. 191, 193, 657 S.E.2d 361, 362 (2008). As this Court explained:

Procedure is essential . . . to the application of principle in courts of justice, and it cannot be dispensed with. It is dangerous to ignore or disregard it. . . . [To do so] is not only discreditable to the administration of public justice, but it leads eventually to confusion and wrong, and leaves the rights and estates of many people in a more or less perilous condition.

*Spence v. Tapscott*, 92 N.C. 576, 578 (1885). Compliance with the rules, therefore, is mandatory. *State v. Hart*, 361 N.C. 309, 311, 644 S.E.2d 201, 202 (2007); *Reep v. Beck*, 360 N.C. 34, 38, 619 S.E.2d 497, 500 (2005); *Steingress v. Steingress*, 350 N.C. 64, 65, 511 S.E.2d 298, 299 (1999); *Craver v. Craver*, 298 N.C. 231, 236, 258 S.E.2d

357, 361 (1979); *Pruitt*, 199 N.C. at 789, 156 S.E. at 127. Parties who default under the rules ordinarily forfeit their right to review on the merits. *See Viar v. N.C. Dep’t of Transp.*, 359 N.C. 400, 401, 610 S.E.2d 360, 360 (2005) (“[F]ailure to follow [the] rules will subject an appeal to dismissal.”) (quoting *Steingress*, 350 N.C. at 65, 511 S.E.2d at 299).

¶ 8           However, “[r]ules of practice and procedure are devised to promote the ends of justice, not to defeat them.” *Hormel v. Helvering*, 312 U.S. 552, 557, 61 S. Ct. 719, 721, 85 L. Ed. 1037, 1041 (1941). Accordingly, we have emphasized that noncompliance with the appellate rules does not, *ipso facto*, mandate dismissal of an appeal. *See Hart*, 361 N.C. at 311, 644 S.E.2d at 202 (“[E]very violation of the rules does not require dismissal of the appeal or the issue . . .”). Whether and how a court may excuse noncompliance with the rules depends on the nature of the default. *Dogwood*, 362 N.C. at 194, 657 S.E.2d at 363.

¶ 9           “Our cases indicate that the occurrence of default under the appellate rules arises primarily from the existence of one or more of the following circumstances: (1) waiver occurring in the trial court; (2) *defects in appellate jurisdiction*; and (3) violation of nonjurisdictional requirements.” *Id.*, 362 N.C. at 194, 657 S.E.2d at 363 (emphasis added). Here, Defendant’s noncompliance falls within the second category, defects in appellate jurisdiction.

¶ 10           “A default precluding appellate review on the merits necessarily arises when

the appealing party fails to complete all of the steps necessary to vest jurisdiction in the appellate court.” *Id.* at 197, 657 S.E.2d at 364. A defendant’s “compliance with the jurisdictional rules governing the taking of an appeal is the linchpin that connects the appellate division with the trial division and confers upon the appellate court the authority to act in a particular case.” *Dogwood*, 362 N.C. at 197, 657 S.E.2d at 364-65; *see Moore v. Vanderburg*, 90 N.C. 10, 10 (1884) (“The appeal is the essential means by which this court gets jurisdiction of an action . . . It is the appeal that puts this court in relation with the case in the court below . . .”); *see also Williams v. Williams*, 188 N.C. 728, 730, 125 S.E. 482, 483 (1924) (explaining that jurisdiction confers upon the court “the power to hear, determine, and pronounce judgment on the issues before [it]”). Generally, a jurisdictional default precludes the appellate court from acting in any manner other than to dismiss the appeal. *See Dogwood*, 362 N.C. at 197 n.3, 657 S.E.2d at 365 n.3.

¶ 11 In the present appeal, Defendant failed to comply with Rule 4, Rule 9, and Rule 21 of our rules of appellate procedure. Accordingly, we lack jurisdiction to hear Defendant’s appeal.

¶ 12 Rule 4 provides a notice of appeal

shall specify the party or parties taking the appeal; shall designate the judgment or order from which appeal is taken and the court to which appeal is taken; and shall be signed by counsel of record for the parties taking the appeal, or by any such party not represented by counsel of

record.

N.C. R. App. P. 4(b). “[W]hen a defendant has not properly given notice of appeal, this Court is without jurisdiction to hear the appeal.” *State v. McCoy*, 171 N.C. App. 636, 638, 615 S.E.2d 319, 320 (2005) (citations omitted).

¶ 13 Here, Defendant acknowledges his notice of appeal “failed to comport with the formalities” of Rule 4. Defendant’s notice of appeal fails to specify: (1) the judgment or order from which the appeal is taken; and (2) the court to which the appeal is taken.

¶ 14 Further, Defendant failed to comply with Rule 9. The record on appeal must contain, among other things, “a copy of the judgment, order, or other determination from which appeal is taken.” N.C. R. App. P. 9(a)(1)(h). Where “there is no civil judgment in the record ordering the defendant to pay attorney fees, the Court of Appeals ha[s] no subject matter jurisdiction on [the] issue.” *State v. Jacobs*, 361 N.C. 565, 566, 648 S.E.2d 841, 842 (2007) (citing N.C. R. App. P. 3(a); N.C. R. App. P. 9(a)(1)(h)); *see also State v. Walker*, 204 N.C. App. 431, 450, 694 S.E.2d 484, 497 (2010). Thus, “[w]hen 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); *see also State v. Parker*, 214 N.C. App. 190, 192, 713 S.E.2d 770, 772 (2011) (notice of appeal omitted). “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 (1983); *State v. Triplett*, 258 N.C. App. 144, 147, 810 S.E.2d 404, 408 (2018).

¶ 15 The trial court entered a civil judgment ordering Defendant to pay \$1,500.00 in attorney fees. The record on appeal was settled on July 30, 2020, but it did not include the order imposing attorney fees. Rule 9 requires the order to be included in the record on appeal in order to confer appellate jurisdiction to this Court. *Jacobs*, 361 N.C. at 566, 648 S.E.2d at 842. Contemporaneously with his PWC on August 31, 2020, Defendant filed a brief with the sole argument articulated as follows: “The trial court committed plain error when it awarded attorney’s [sic] fees to defense counsel without giving [Defendant] notice and an opportunity to be heard.” Neither the PWC nor the record on appeal included the civil judgment for attorney fees.

¶ 16 On September 10, 2020, Defendant filed a motion to amend the record on appeal to include the civil judgment order pursuant to Rule 9(b)(5). This Court has discretion to grant such a motion. *State v. Petersilie*, 334 N.C. 169, 177, 432 S.E.2d 832, 837 (1993) (noting the decision to grant or deny a motion to amend the record on appeal is “a decision within the discretion of the Court of Appeals”) (citation omitted). However, in our discretion, we deny Defendant’s motion to amend the record on appeal. We note that we are allowing Defendant’s motion to amend his PWC, which includes the civil judgment from which he now attempts to appeal.

¶ 17 Defendant attempted to remedy his noncompliance with the rules of appellate



procedure by filing a PWC, requesting that we exercise our discretion and hear the merits of his appeal. We may grant a PWC “in appropriate circumstances” to permit review of a judgment of the trial court “when the right to prosecute an appeal has been lost by failure to take timely action, or when no right of appeal from an interlocutory order exists, or for review pursuant to N.C. Gen. Stat. § 15A-1422(c)(3) of an order of the trial court ruling on a motion for appropriate relief.” N.C. R. App.

P. 21(a)(1). A PWC

shall contain a statement of the facts necessary to an understanding of the issues presented by the application; a statement of the reasons why the writ should issue; and certified copies of the judgment, order or opinion or parts of the record which may be essential to an understanding of the matters set forth in the petition. The petition shall be verified by counsel or the petitioner.

N.C. R. App. P. 21(c). “Certiorari is a discretionary writ, to be issued only for good and sufficient cause shown.” *State v. Rouson*, 226 N.C. App. 562, 564, 741 S.E.2d 470, 471 (2013) (quoting *State v. Grundler*, 251 N.C. 177, 189, 111 S.E.2d 1, 9 (1959), *cert. denied*, 362 U.S. 917, 80 S. Ct. 670, 4 L. Ed. 2 (1960)). Absent good and sufficient cause, a certiorari petition should be denied. *Id.*

Here, Defendant did not meet the requirements of Rule 21(c). Defendant’s petition did not include a statement of the facts necessary to gain an understanding of the issue presented or a statement explaining why this Court should issue the writ. The only justification for granting the PWC Defendant advanced is an allegation that

an attorney failed to properly prepare and file the notice of appeal. There is nothing in the record on appeal which supports his contention that the notice was prepared or filed by an attorney. Rather, the record reveals that the notice was prepared, signed, and filed *pro se* by Defendant. Thus, Defendant's PWC fails to meet the requirements of Rule 21. Defendant filed a motion to amend his PWC on September 10, 2020.

¶ 19 In Defendant's motion to amend his PWC, he requests this Court allow the missing civil judgment for payment of attorney fees be added to his PWC. Defendant argues the trial court erred in entering the civil judgment for attorney fees in his brief, but he failed to file notice of appeal from the civil judgment. In our discretion, we grant Defendant's motion to amend his PWC. However, even with the amendment to his PWC, Defendant failed to show good and sufficient cause for this Court to issue a writ of certiorari. Accordingly, Defendant's PWC is denied.

¶ 20 After careful review, we grant Defendant's motion to amend his PWC, deny Defendant's PWC, deny Defendant's motion to amend his record on appeal, and grant the State's motion to dismiss this appeal.

DISMISSED.

Judges TYSON and COLLINS concur.

Report per Rule 30(e).