An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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-413

No. COA20-674

Filed 3 August 2021

Buncombe County, No. 17 CRS 93691

STATE OF NORTH CAROLINA, Plaintiff,

v.

JAYLEEN M. BOSTON, Defendant.

Appeal by Defendant from order entered 11 July 2019 by Judge Alan Z. Thornburg in Buncombe County Superior Court. Heard in the Court of Appeals 12 May 2021.

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

Sigler Law PLLC, by Kerri L. Sigler, for Defendant-Appellant.

WOOD, Judge.

¶ 1 Defendant Jayleen M. Boston ("Defendant") appeals a criminal judgment ordering Defendant to pay attorney fees to Defendant's standby counsel. After careful review, we dismiss Defendant's appeal.

I. Background

¶ 2 On December 20, 2017, law enforcement officers attempted to stop Defendant's vehicle for traffic infractions. Instead of stopping, Defendant led law enforcement on a high speed chase. Defendant stopped after running over police-deployed stop sticks[1] and was subsequently arrested.

¶ 3 Defendant was indicted on May 7, 2018, for felony operating a motor vehicle while fleeing or attempting to elude arrest. Defendant's trial was held July 8, 2019 through July 11, 2019, in Buncombe County Superior Court. Defendant waived his right to an attorney, and the trial court appointed Defendant standby counsel. The jury convicted Defendant of felony operating a motor vehicle to elude arrest on July 11, 2019, and he was sentenced to a minimum of ten months and a maximum of twenty-one months. Defendant was given credit for four hundred eleven days of pre-trial confinement and was released. Within the criminal judgment order, the trial court ordered Defendant to pay court costs, attorney fees, and an appointment fee.[2] Defendant timely filed written notice of appeal on July 22, 2019.

II. Discussion

[1] Stop sticks are comprised of sleeves of three thirty-six-inch-long strips of spikes that stick into and deflate vehicle tires when run over.

[2] Defendant is not contesting the court costs or appointment fee.

¶ 4 In his sole argument on appeal, Defendant contends the trial court erred by ordering Defendant to pay attorney fees without giving him notice or an opportunity to be heard. Defendant relies on N.C. Gen. Stat. § 7A-455, which states,

> (a) If . . . an indigent person is financially able to pay a portion . . . of the value of the legal services rendered for that person by assigned counsel . . . the court shall order the partially indigent person to pay such portion . . . .
>
> (b) In all cases the court shall direct that a judgment be entered in the office of the clerk of superior court for the money value of services rendered by assigned counsel . . . .

N.C. Gen. Stat. § 7A-455 (2020). Under Section 7A-455, the trial court may enter a civil judgment against a convicted indigent for attorney fees and costs. *See State v. Stafford*, 45. N.C. App. 297, 300, 262 S.E.2d 695, 697 (1980); *see also State v. Washington*, 51 N.C. App. 458, 459, 276 S.E.2d 470, 471 (1981). In this case, while a criminal judgment was entered against Defendant, the civil judgment required for attorney fees under Section 7A-455 is not in the record before us. Because "[a]ppellate review is based 'solely upon the record on appeal,' " *Collins v. Talley,* 146 N.C. App. 600, 603, 553 S.E.2d 101, 102 (2001) (quoting N.C. R. App. P. 9(a)), without a civil judgment imposing attorney fees, the appeal is not properly before us and is subject to dismissal. *See State v. Mangum*, 270 N.C. App. 327, 331, 840 S.E.2d 862, 866 (2020) (citation omitted) ("Defendant should not have filed the record and proceeded with this appeal until *after* entry of the [civil] order, and that order needed to be

included in the record on appeal in order to confer regular appellate jurisdiction on this Court." (emphasis in original) (citation omitted)). Therefore, without a civil judgment, this Court lacks jurisdiction to rule on the merits. *See State v. Hutchens*, 272 N.C. App. 156, 160, 846 S.E.2d 306, 310 (2020) ("We lack subject matter jurisdiction to review an appeal from an order for attorney[] fees not entered as a civil judgment."). "We conclude that because there is no civil judgment in the record ordering [D]efendant to pay attorney fees, the Court of Appeals ha[s] no subject matter jurisdiction on this issue." *State v. Jacobs*, 361 N.C. 565, 566, 648 S.E.2d 841, 842 (2007). Therefore, we dismiss Defendant's appeal.

DISMISSED.

Judges TYSON and HAMPSON concur.

Report per Rule 30(e).