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IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-469

No. COA20-752

Filed 7 September 2021

Guilford County, Nos. 17 CRS 67374; 18 CRS 66199, 66622, 81632, 81636; 19 CRS 25443, 25584, 25591–95, 66455, 70510, 71794, 79925, 81545

STATE OF NORTH CAROLINA

v.

ESSAM BASSAM ALLAMADANI

Appeal by defendant from judgments entered 15 January 2020 by Judge John O. Craig III in Guilford County Superior Court. Heard in the Court of Appeals 8 June 2021.

Attorney General Joshua H. Stein, by Assistant Attorney General Joseph L. Hyde and Assistant Attorney General Robert C. Ennis, for the State.

Drew Nelson for defendant.

DIETZ, Judge.

¶ 1 Defendant Essam Bassam Allamadani appeals a money judgment entered against him for the fees of his court-appointed counsel in this criminal proceeding. Allamadani contends that the trial court violated his due process rights by entering that judgment without providing him with sufficient opportunity to be heard. The State contends that the trial court never intended to enter that money judgment and

instead made a clerical error when recording it.

¶ 2 As explained below, on the record available to us, we cannot be certain that the trial court's entry of this money judgment was a clerical error. We therefore vacate that portion of the trial court's judgment and remand for further proceedings on that issue to ensure that the judgment reflects the trial court's intent.

Facts and Procedural History

¶ 3 In January 2020, Allamadani pleaded guilty to multiple criminal charges. The trial court consolidated the charges and sentenced Allamadani to 87 to 117 months in prison. At the conclusion of the sentencing hearing, the trial court stated that the fee for Allamadani's court-appointed counsel "is set at \$2,715, but it and the court costs are to be waived." The trial court also entered an order remitting costs and fees in which the court stated that those fees "are hereby waived."

¶ 4 On the same day, the trial court entered its written judgment using a standardized form. That judgment includes the \$2,715 in attorneys' fees for Allamadani's court-appointed counsel. The form has a checkbox to indicate that the trial court is not entering a money judgment for those attorneys' fees. That box is not checked. The trial court also signed a separate section of the judgment form indicating that a money judgment for the attorneys' fees "shall be entered and filed this day."

¶ 5 In April 2020, several months after entry of the judgment, Allamadani filed a

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pro se written notice of appeal. Then, a few days later, Allamadani filed a second written notice of appeal, this time through counsel. Both notices were untimely and had other defects. In October 2020, Allamadani filed a petition for a writ of certiorari, seeking review of the trial court’s money judgment for his court-appointed counsel’s fees. In our discretion, we allow the petition and issue a writ of certiorari to address this issue.

Analysis

¶ 6 Allamadani argues that the trial court erred by entering a civil judgment against him for his court-appointed attorneys’ fees without first providing him an opportunity to be heard on the issue.

¶ 7 Before entering a money judgment against a defendant for the fees incurred by their court-appointed counsel, the trial court must provide the defendant with an adequate opportunity to be heard on the issue. *State v. Friend*, 257 N.C. App. 516, 522–23, 809 S.E.2d 902, 906–07 (2018). This requires the trial court to “ask defendants—personally, not through counsel—whether they wish to be heard on the issue. Absent a colloquy directly with the defendant on this issue, the requirements of notice and opportunity to be heard will be satisfied only if there is other evidence in the record demonstrating that the defendant received notice, was aware of the opportunity to be heard on the issue, and chose not to be heard.” *Id.* at 523, 809 S.E.2d at 907.

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¶ 8 Here, the State concedes that the trial court did not address Allamadani adequately about his right to be heard on the issue of attorneys' fees and thus, under *Friend*, the trial court could not enter a money judgment for those fees. But the State contends that the trial court never intended to impose that money judgment, having also ordered that those fees were waived. Thus, the State argues, the trial court committed a clerical error when selecting the appropriate boxes on the form order used to enter the judgment. The State asks us to remand this matter solely for the correction of that clerical error so that the judgment reflects the trial court's intent.

¶ 9 “When, on appeal, a clerical error is discovered in the trial court's judgment or order, it is appropriate to remand the case to the trial court for correction because of the importance that the record ‘speak the truth.’” *State v. Smith*, 188 N.C. App. 842, 845, 656 S.E.2d 695, 696 (2008). “Clerical errors include mistakes such as inadvertently checking the wrong box on preprinted forms.” *Rudder v. Rudder*, 234 N.C. App. 173, 179, 759 S.E.2d 321, 326 (2014). But, importantly, we cannot remand for correction of a clerical error if “we cannot be sure from the record on appeal that this was a clerical error in the recording of the judgment.” *State v. Wallace*, 272 N.C. App. 447, 843 S.E.2d 733, 2020 WL 3721445, at *4 (2020) (unpublished).

¶ 10 Here, we cannot confidently conclude that the trial court made a mere clerical error. Because of the importance of ensuring that the judgment reflects the intent of the sentencing court, we vacate this portion of the trial court's judgment and remand

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for further proceedings. If the trial court committed a clerical error, it may reenter the judgment with the appropriate boxes marked on the form. If the court intended to enter a money judgment for the fees of Allamadani's court-appointed counsel, the court should conduct further proceedings consistent with *Friend* before entering that judgment. *See Friend*, 257 N.C. App. at 522–23, 809 S.E.2d at 906–07.

VACATED AND REMANDED.

Judges INMAN and CARPENTER concur.

Report per Rule 30(e).