An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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-512

No. COA20-391

Filed 21 September 2021

Mecklenburg County, 17CRS023463, 17CRS026201, 17CRS202720 & 17CRS202719

STATE OF NORTH CAROLINA

v.

DAJUAN FLEMING, Defendant.

Appeal by Defendant from judgment entered 7 January 2019 by Judge Eric Levinson in Mecklenburg County Superior Court. Heard in the Court of Appeals 9 June 2021.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Katherine A. Murphy, for the State.

Guy J. Loranger for the Defendant.

DILLON, Judge.

I. Background

¶ 1 Defendant DaJuan Lamont Fleming was found guilty of possession of a firearm by a felon and to attaining habitual felon status. The trial court entered a criminal judgment against Defendant on 5 October 2018. At sentencing, the trial court asked

Defendant's court-appointed attorney how much time he had spent on the case, to which his attorney estimated his fees to be "in the vicinity of $10,000." At the established rate of $75 an hour for indigent defense, his time was estimated between 130-140 hours. The court asked Defendant if he agreed that his lawyer spent that amount of time on his case, to which he replied, "Yes." The court then instructed the clerk to place a civil lien against Defendant for no more than $10,000.

¶ 2 After adding up all the expenses, including the cost of his paralegal's time, Defendant's lawyer submitted an expense form with an elevated total amount of $11,118.[1] With this information, on 7 January 2019, the court entered a civil judgment against Defendant for $11,118 in attorney fees and expense, along with a $60 attorney appointment fee. Defendant did not timely file notice of appeal from the civil judgment.

¶ 3 Subsequently, on 15 July 2019, Defendant petitioned this Court for a writ of *certiorari* for purposes of allowing him to take a belated appeal solely from the 5 October 2018 criminal judgment, which this Court allowed on 26 July 2019. During the pendency of Defendant's belated appeal to this Court, Defendant filed a second petition for writ of *certiorari* seeking review of the civil judgment. However, he did not file his petition until 20 November 2020, more than 22 months after the civil

[1] He initially submitted a form with expenses totaling $10,705 but later supplemented with a new form containing the figure $11,118.

judgment was entered. We note that Defendant has not raised any argument challenging the criminal judgment in his petition.

II. Analysis

¶ 4 Defendant argues that the court erred by granting fees against him in excess of the $10,000 that he had previously agreed to without providing him a proper opportunity to be heard. *See State v. Crews*, 284 N.C. 427, 441-42, 201 S.E.2d 840, 849-50 (1974) (concluding that under N.C. Gen. Stat. § 7A-455(b), it is error for a trial court to enter an award for attorney's fees without notice to the defendant and without providing an opportunity to be heard).

¶ 5 Our Supreme Court has stated that discretionary review may be appropriate where there is a showing of (1) a defendant's diligence in prosecution of the appeal and (2) the existence of merit, or that probable error was committed below. *State v. Moore*, 210 N.C. 686, 691, 188 S.E. 421, 424 (1936).

¶ 6 Though Defendant has demonstrated that the trial court may have erred, we deny his petition. Defendant did not demonstrate a diligence in filing his petition. Indeed, he waited almost two years to file to seek review of the civil judgment. We, therefore, deny Defendant's petition for writ of *certiorari* and dismiss Defendant's appeal.

APPEAL DISMISSED.

Judges ZACHARY and HAMPSON concur.

Report per Rule 30(e).