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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-82

No. COA21-474

Filed 1 February 2022

Beaufort County, Nos. 18 CRS 51687, 18 CRS 51688, 19 CRS 50917

STATE OF NORTH CAROLINA,

v.

NAQUAN TERCEE PARKER, Defendant.

Appeal by defendant from judgments entered 13 April 2021 by Judge Wayland J. Sermons, Jr. in Beaufort County Superior Court. Heard in the Court of Appeals 11 January 2022.

Attorney General Joshua H. Stein, by Assistant Attorney General Regina T. Cucurullo, for the State.

Leslie Rawls for Defendant-Appellant.

CARPENTER, Judge.

¶ 1 Naquan Tercee Parker (“Defendant”) appeals pursuant to N.C. Gen. Stat. § 15A-1444(a2)(2) from judgments entered upon his guilty plea to two counts of possession with intent to sell or deliver heroin pursuant to N.C. Gen. Stat. § 90-

95(a)(1) and one count of possession with intent to sell and deliver heroin within 1,000 feet of a school pursuant to N.C. Gen. Stat. § 90-95(e)(8). On appeal, Defendant argues the trial court erred in imposing the same criminal costs in both judgments in violation of N.C. Gen. Stat. § 7A-304(a). Because we conclude this Court lacks jurisdiction to hear this case under N.C. Gen. Stat. § 15A-1444, we dismiss Defendant's appeal.

I. Factual & Procedural Background

¶ 2 The record tends to show the following: Defendant was released from the North Carolina Department of Corrections in August of 2018. On 24 September 2018, Defendant sold 0.22 grams of fentanyl and heroin, valued at \$100, to a confidential informant for the Beaufort County Sheriff's Office. The following day, Defendant sold 0.18 grams of heroin, valued at \$145, to another confidential informant. Approximately two months later, on 29 November 2018, Defendant sold 0.39 grams of heroin to a confidential informant within 1,000 feet of the Beaufort County Educational Technical Center.

¶ 3 On 10 December 2018, a Beaufort County grand jury returned a true bill of indictment against Defendant on two charges of possession with intent to sell or deliver a controlled substance under file numbers 18 CRS 51687 and 18 CRS 51688. On 6 July 2020, a Beaufort County grand jury returned a true bill of indictment against Defendant on one charge of possession with intent to sell or deliver a

controlled substance within 1,000 feet of the boundary of a school under file number 19 CRS 50917.

¶ 4 The matter came on for hearing at the 13 April 2021 session of Beaufort County Criminal Superior Court before the Honorable Wayland J. Sermons, Jr. Defendant entered into a plea arrangement whereby he agreed to plead guilty to all three charges in exchange for the State dismissing two habitual felon indictments. The trial court accepted Defendant’s plea arrangement with the State and issued two judgments: one judgment for the conviction of possession with intent to sell or deliver a controlled substance within 1,000 feet of a school (file 19 CRS 50917), and a second judgment consolidating the two convictions of possession with intent to sell or deliver a controlled substance (files 18 CRS 51687 and 18 CRS 51688). Separate “Restitution Worksheet, Notice and Order” forms and Criminal Bills of Costs were completed for both file numbers 18 CRS 51687 and 19 CRS 50917. In both Criminal Bills of Costs forms, the trial court assessed the same court costs, totaling \$565.50. Defendant filed a notice of appeal with this Court on 19 April 2021.

II. Issue

¶ 5 The sole issue before the Court is whether the trial court erred by imposing court costs for two convictions across two judgments.

III. Jurisdiction

¶ 6 Plaintiff appeals from the judgments entered 13 April 2021 pursuant to N.C.

Gen. Stat. § 15A-1444(a2)(2) (2019). “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 (citations omitted), *disc. rev. denied*, 356 N.C. 442, 573 S.E.2d 163 (2002); *see* N.C. Gen. Stat. § 15A-1444. “It is well-established that the issue of a court’s jurisdiction over a matter may be raised at any time, even for the first time on appeal or by a court *sua sponte*.” *State v. Webber*, 190 N.C. App. 649, 650, 660 S.E.2d 621, 622 (2008) (citation omitted). Because Defendant entered a plea of guilty, his right to appeal from the judgments is limited. *See* N.C. Gen. Stat. § 7A-27(b)(1) (2019) (“[A]ppeal lies of right directly to the Court of Appeals . . . [f]rom any final judgment of a superior court, other than one based on a plea of guilty”).

¶ 7

N.C. Gen. Stat. § 15A-1444(a2)(2) provides:

[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:

....

[c]ontains a type of sentence disposition that is not authorized by [N.C. Gen. Stat. §] 15A-1340.17 or [N.C. Gen. Stat. §] 15A-1340.23 for the defendant’s class of offense and prior record or conviction level .

...

N.C. Gen. Stat. § 15A-1444(a2)(2) (2019).

¶ 8

Here, Defendant has raised on appeal the issue of whether court costs were

properly imposed in both 13 April 2021 judgments. N.C. Gen. Stat. § 15A-1444(a2)(2) allows a defendant who has entered a guilty plea to appeal as a matter of right when the sentence imposed contains a type of sentence disposition not authorized by N.C. Gen. Stat. § 15A-1340.17 or N.C. Gen. Stat. § 1340.23. Although N.C. Gen. Stat. § 1340.17(b) specifically allows a court to include a discretionary fine in any judgment, neither N.C. Gen. Stat. § 15A-1340.17 nor N.C. Gen. Stat. § 1340.23 governs court costs. N.C. Gen. Stat. § 15A-1340.17 (2019); N.C. Gen. Stat. § 1340.23 (2019). Rather, the statutorily prescribed court costs assessed in criminal cases are governed by N.C. Gen. Stat. § 7A-304(a) (2019). Additionally, N.C. Gen. Stat. § 7A-304 distinguishes between fines and costs by setting forth the priorities in which funds collected for costs, fines, restitution, attorneys' fees, and other lawful charges are to be disbursed. N.C. Gen. Stat. § 7A-304(d) (2019). We conclude N.C. Gen. Stat. § 15A-1444(a2)(2) does not entitle Defendant to appeal as a matter of right the issue of court costs imposed in his judgments under N.C. Gen. Stat. § 7A-304(a). Furthermore, Defendant did not petition the Court for a writ of certiorari. Therefore, we are without subject matter jurisdiction to hear the matter, and we dismiss the appeal without prejudice to Defendant to bring a motion for appropriate relief before the trial.

IV. Conclusion

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appeal. Accordingly, we dismiss Defendant's appeal without prejudice to his right to file a motion for appropriate relief in the trial court pursuant to N.C. Gen. Stat. § 15A-1411 *et seq.* See *State v. Miller*, 243 N.C. App. 660, 665, 777 S.E.2d 337, 341 (2015).

APPEAL DISMISSED.

Judges ARROWOOD and HAMPSON concur.

Report per Rule 30(e).