An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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

2022-NCCOA-185

No. COA21-448

Filed 15 March 2022

Buncombe County, No. 19 CRS 89087

STATE OF NORTH CAROLINA

v.

DAVID EUGENE DAUGHERTY, Defendant.

Appeal by defendant from judgment entered 23 January 2021 by Judge Steve R. Warren in Buncombe County Superior Court. Heard in the Court of Appeals 11 January 2022.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Katherine M. McCraw, for State-appellee.

Mary McCullers Reece for defendant-appellant.

GORE, Judge.

¶ 1 On 6 October 2019, an arrest warrant was issued for defendant, David Daugherty, in connection with an alleged assault on a female. On 22 January 2020, in district court defendant entered a plea of guilty for misdemeanor assault on a female and was sentenced to a term of 150 days imprisonment. Defendant's sentence

was suspended and he was placed on 12 months supervised probation. Additionally, defendant was assessed fees in the total amount of $480.00.

¶ 2 In district court, defendant entered oral notice of appeal in open court contemporaneous to the entry of judgment. On 24 January 2020, defendant entered written notice of appeal to the superior court. The case came on for trial in superior court on 23 February 2021. A jury convicted defendant as charged. Defendant was sentenced to 150 days suspended for a period of 12 months and assessed costs and fees. Defendant gave notice of appeal from the superior court judgment to the Court of Appeals in open court. Additionally, defendant filed a Petition for Writ of Certiorari on 7 September 2021 requesting this Court review the superior court's civil judgment of attorney's fees should this Court find error in defendant's notice of appeal. In our discretion, afforded us by Rule 21(a)(1) of the North Carolina Rules of Appellate Procedure, we grant defendant's petition.

¶ 3 On appeal, defendant argues the trial court erred by entering judgment against him for attorney's fees without first giving him notice and an opportunity to be heard. The State concedes that the trial court erred by not giving defendant an opportunity to be heard.

> [B]efore entering money judgments against indigent defendants for fees imposed by their court-appointed counsel under N.C. Gen. Stat. § 7A-455, trial courts should ask defendants—personally, not through counsel—whether they wish to be heard on the issue. Absent a

> colloquy directly with defendant on this issue, the requirements for 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 this issue, and chose not to be heard.

State v. Friend, 257 N.C. App. 516, 523, 809 S.E.2d 902, 907 (2018) (vacating a civil judgment for attorney's fees and remanding for further proceedings on that issue). We agree with defendant and the State. A proper colloquy was not conducted and no evidence in the record shows defendant waived his right to be heard. We hold that the civil judgment for attorney's fees entered by the superior court against defendant is vacated and the matter is remanded to the trial court for further proceedings consistent with this opinion.

VACATED AND REMANDED.

Chief Judge STROUD and Judge TYSON concur.

Report per Rule 30(e).