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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-437

No. COA22-113

Filed 21 June 2022

Rutherford County, No. 20 CRS 550

STATE OF NORTH CAROLINA, Plaintiff,

v.

RHONDA SUE PRICE, Defendant.

Appeal by Defendant from written judgment entered 4 August 2021 by Judge J. Thomas Davis in Rutherford County Superior Court. Heard in the Court of Appeals 10 May 2022.

Reece & Reece, by Mary McCullers Reece, for Defendant-Appellant.

Attorney General Joshua H. Stein, by Assistant Attorney General Matthew Baptiste Holloway, for the State.

CARPENTER, Judge.

¶ 1

Rhonda Sue Price (“Defendant”) appeals the written judgment of her revocation hearing, which did not reflect the amount of credit for time served verbally granted by the trial court. After careful review, we remand to correct the clerical error.

I. Factual Background

¶ 2 On 23 June 2020, Defendant pleaded guilty to one count of malicious conduct by a prisoner. The trial court sentenced Defendant to a nineteen to thirty-two month suspended sentence, placed Defendant on thirty months of supervised probation, and ordered Defendant to serve seventy-five days in custody.

¶ 3 Defendant violated her probation, and on 16 April 2021, Defendant’s probation officer filed violation reports alleging, among other things, “[d]efendant committed the criminal offense of . . . communicating threats.” Defendant admitted these violations at her revocation hearing on 4 August 2021. The trial court, with Defendant present, revoked Defendant’s probation, activated her nineteen to thirty-two month suspended sentence, and verbally ordered that she receive 152 days of credit for time served. Though the trial court verbally granted Defendant 152 days of credit for time served, the written judgment revoking Defendant’s probation does not reflect this award. Rather, the space for Defendant’s jail credit was left blank.

II. Jurisdiction

¶ 4 This Court has jurisdiction to address Defendant’s appeal pursuant to N.C. Gen. Stat. §§ 7A-27(b) and 15A-1444(a) (2021).

III. Issue

¶ 5 The issue on appeal is whether this Court should remand this matter for correction of a clerical error in order that the written judgment reflects the jail credit granted by the trial court on the record or whether this Court should require

Defendant to petition to have the judgment amended to reflect the jail credit ordered pursuant to N.C. Gen. Stat. § 15-196.4 (2021).

IV. Standard of Review

¶ 6

“When a defendant assigns error to the sentence imposed by the trial court [this Court’s] standard of review is whether [the] sentence is supported by evidence introduced at the trial and sentencing hearing.” *State v. Chivers*, 180 N.C. App. 275, 278, 636 S.E.2d 590, 593 (2006) (internal quotation and citation omitted), *disc. review denied*, 361 N.C. 222, 642 S.E.2d 709 (2007); *see* N.C. Gen. Stat. § 15A-1444(a1) (2021). “If the alleged sentencing error is only clerical in nature, ‘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. Allen*, 249 N.C. App. 376, 379, 790 S.E.2d 588, 591 (2016) (quoting *State v. Smith*, 188 N.C. App. 842, 845, 656 S.E.2d 695, 696–97 (2008) (internal quotations and citation omitted)).

V. Analysis

¶ 7

The State contends a complaint about a trial court’s award of jail credit is “a matter for administrative action, as provided by [N.C. Gen. Stat. §] 15-196.4” and not reviewable by this Court. *State v. Mason*, 295 N.C. 584, 594, 248 S.E.2d 241, 248 (1978). “Upon sentencing or activating a sentence, the judge presiding shall determine the credits to which the defendant is entitled and shall cause the clerk to transmit to the custodian of the defendant a statement of allowable credits.” N.C.

Gen. Stat. § 15-196.4 (2021). If a defendant is not satisfied with the amount of credit granted by the trial court, they may petition to the trial court to correct that error. *See id.*

¶ 8

Here, Defendant does not contend the trial court erred in the amount of credit given, but that the trial court made a clerical error in the written record for credit that does not accurately reflect the credit Defendant was to receive as announced in open court by the trial judge. A clerical error is “an error resulting from a minor mistake or inadvertence, [especially] in writing or copying something on the record, and not from judicial reasoning or determination.” *State v. Taylor*, 156 N.C. App. 172, 177, 576 S.E.2d 114, 117-18 (2003) (quoting *State v. Jarman*, 140 N.C. App. 198, 202, 535 S.E.2d 875, 878 (2000)). “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.’” *Smith*, 188 N.C. App. at 845, 656 S.E.2d at 696 (quoting *State v. Linemann*, 135 N.C. App. 734, 738, 522 S.E.2d 781, 784 (1999)).

¶ 9

The State cites to several cases where defendants appealed the amount of credit granted. In each case, this Court determined that while the defendants had no right to appeal, they maintained the right to petition to the trial court pursuant to N.C. Gen. Stat. § 15-196.4. *See State v. Cloer*, 197 N.C. App. 716, 678 S.E.2d 399 (2009); *State v. Hughes*, 234 N.C. App. 479, 762 S.E.2d 532 (2014) (unpublished);

State v. Tart, 256 N.C. App. 755, 808 S.E.2d 178 (2017) (unpublished). In *Cloer*, the trial court granted the defendant credit for 14 days served; the defendant appealed, claiming the trial court should have granted credit for 56 days. *Cloer*, 197 N.C. App. at 718, 678 S.E.2d at 401. In both *Hughes* and *Tart*, each trial court directed the clerks of court to credit the number of days awaiting trial without stating a specific amount of time. See *Hughes*, 234 N.C. App. 479, 762 S.E.2d 532; *Tart*, 256 N.C. App. 755, 808 S.E.2d 178. Here, however, the trial court verbally awarded Defendant a specific amount of credit (152 days), and Defendant does not ask for additional credit. Rather, Defendant asks the case to be remanded to the trial court so that the judgment and commitment may be made to “speak the truth.” *Smith*, 188 N.C. App. at 845, 656 S.E.2d at 696 (quoting *State v. Linemann*, 135 N.C. App. 734, 738, 522 S.E.2d 781, 784 (1999)). Importantly, the State does not argue that 152 days of credit is incorrect in amount, nor does the State argue that it was unlawful for Defendant to receive 152 days of credit. Instead, the State argues that the Defendant must seek relief through a different procedure to make the judgment “speak the truth.” For the written judgment to “speak the truth” on the number of credit days awarded to Defendant, we must remand for correction of the clerical error. See *id.* at 845, 656 S.E.2d at 696.

VI. Conclusion

¶ 10

The issue here is not whether the trial court granted Defendant the correct amount of credit for time served. Therefore, Defendant is not obligated to follow the procedure laid out by N.C. Gen. Stat. § 15-196.4 (2021). *See Cloer*, 197 N.C. App. at 721, 678 S.E.2d at 403. Rather, the written judgment from Defendant’s revocation hearing does not contain the amount of credit verbally granted by the trial court, constituting a clerical error, not an error from “judicial mistake or determination.” *Taylor*, 156 N.C. App. at 177, 576 S.E.2d at 117-18 (2003). When a sentencing error appearing before this Court is “only clerical in nature,” as here, “it is appropriate to remand the case to the trial court for correction because of the importance that the record speak the truth.” *Allen*, 249 N.C. App. at 379, 790 S.E.2d at 591 (citation omitted). Accordingly, we remand to correct the clerical error.

REMAND FOR CORRECTION OF CLERICAL ERROR.

Judges STROUD and COLLINS concur.

Report per Rule 30(e).