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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-439

No. COA21-538

Filed 21 June 2022

Rutherford County, Nos. 18 CRS 53659, 702746; 19 CRS 51585, 51671, 701436-37

STATE OF NORTH CAROLINA

v.

TREVELLE D L SHADE

Appeal by defendant from judgment entered 1 February 2021 by Judge J. Thomas Davis in Rutherford County Superior Court. Heard in the Court of Appeals 25 May 2022.

*Attorney General Joshua H. Stein, by Special Deputy Attorney General Sarah N. Cibik, for the State.*

*Kimberly P. Hoppin for defendant-appellant.*

ARROWOOD, Judge.

¶ 1

Trevelle D L Shade (“defendant”) appeals and petitions this Court from a judgment entered against him following his entry of a guilty plea pursuant to a plea agreement. For the following reasons, we deny defendant’s petition and dismiss the appeal.

I. Background

¶ 2 In 2019, defendant appeared in Rutherford County District Court and pled guilty to one count of criminal contempt, one count of possession of marijuana, four counts of driving while license revoked, two counts of failure to appear on a misdemeanor, three counts of operating a vehicle without insurance, one count of driving a vehicle with no registration, and two counts of displaying a fictitious tag. Defendant then appealed the judgment to Rutherford County Superior Court (the “trial court”), which dismissed the charge of criminal contempt.

¶ 3 On 1 February 2021, defendant appeared before the trial court, Judge Davis presiding. Pursuant to a plea agreement, defendant pled guilty to one count of possession of marijuana, four counts of driving while license revoked, two counts of fictitious or altered tag or registration, two counts of failure to appear on a misdemeanor, and one count of operating a vehicle without insurance.

¶ 4 Pertinently, the following was exchanged between defendant and the trial court during the hearing:

THE COURT: You understand that following a plea of guilty there are limitations on your right to appeal from this judgment?

THE DEFENDANT: Yes, sir.

. . . .

THE COURT: Do you understand that the courts have approved the practice of plea arrangements and you can discuss your plea arrangement with me without fear of my

disapproval?

THE DEFENDANT: Yes, sir.

THE COURT: Have you agreed to plead guilty as part of a plea arrangement?

[THE] DEFENDANT: Yes, sir.

THE COURT: The prosecutor, your lawyer, and you have informed the Court that these are all the terms and conditions of your plea. That is that all the charges will be consolidated into one of the Class 2 misdemeanors for sentencing. You will receive an active sentence. It will be 30 days, and you will be given credit for any pretrial confinement that you may have towards that.

THE DEFENDANT: Yes, sir.

THE COURT: Also pursuant to this plea you have a no liability insurance charge and operating a vehicle with no insurance charge being dismissed. Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: Is the plea arrangement as set forth within this transcript and as I have just described it to you correct as being your full plea arrangement?

THE DEFENDANT: Yes, sir.

THE COURT: Do you now personally accept this arrangement?

THE DEFENDANT: Yes, sir.

....

THE COURT: Do you agree that there are facts to support your plea, and do you consent to the Court hearing a summary of the evidence?

THE DEFENDANT: Yes, sir.

THE COURT: Do you have any questions about what has just been said to you or about anything else connected to your case?

THE DEFENDANT: No, sir.

¶ 5           Thereafter, the State provided a statement of the facts, illustrating each charge against defendant; defendant did not object. Then, the trial court asked: “Anything from the defendant regarding plea adjudication?” Defendant replied, “No, sir.” Accordingly, the trial court dismissed the two counts of operating a vehicle without insurance, consolidated the remaining charges, and entered a judgment in which it sentenced defendant to a thirty-day active sentence and credited thirty days for time served.

¶ 6           On 12 February 2021, defendant submitted a *pro se* handwritten document stating his intent to appeal. This notice of appeal was not served upon the State, did not indicate the venue from which defendant appealed, and did not name this Court as the venue to which he appealed. Appellate counsel was appointed on 12 March 2021.

¶ 7 Defendant filed a Petition for *Writ of Certiorari* (“PWC”) to this Court on 14 January 2022. On 15 March 2022, the State filed a Motion to Dismiss Appeal, arguing, in pertinent part, that defendant lacked a statutory right to appeal.

## II. Discussion

¶ 8 Defendant argues that the trial court erred by accepting his guilty plea and entering judgment “where the State’s factual basis did not support the commission of each offense reflected in the plea transcript[,]” and that the trial court lacked jurisdiction to enter the judgment “for a violation of N.C. Gen. Stat. § 20-309” because “the citation purporting to charge the offense was fatally defective.”

¶ 9 A defendant who pleads guilty in superior court is entitled to appeal as a matter of right if, and only if, the sentence imposed: “(1) [r]esults from an incorrect finding of the defendant’s prior record level . . . or . . . prior conviction level”; “(2) [c]ontains a type of sentence disposition that is not authorized by [our General Statutes] for the defendant’s class of offense and prior record or conviction level”; or “(3) [c]ontains a term of imprisonment that is for a duration not authorized by” our General Statutes. N.C. Gen. Stat. § 15A-1444(a2) (2021). If, on appeal, the defendant’s argument does not entail any of the forementioned issues, the defendant “may petition the appellate division for review by writ of certiorari.” N.C. Gen. Stat. § 15A-1444(e).

¶ 10 In the case *sub judice*, the arguments defendant presents in both his appellate brief and PWC do not entitle him to an appeal as of right under N.C. Gen. Stat. § 15A-1444(a2). Accordingly, it is in the Court’s discretion whether to grant or deny defendant’s PWC. See N.C. Gen. Stat. § 15A-1444(e).

¶ 11 “A writ of *certiorari* is an extraordinary remedial writ[.]” *State v. Roux*, 263 N.C. 149, 153, 139 S.E.2d 189, 192 (1964) (citation omitted). “*Certiorari* is a discretionary writ, to be issued only for good and sufficient cause shown.” *State v. Grundler*, 251 N.C. 177, 189, 111 S.E.2d 1, 9 (1959) (citation omitted), *cert. denied*, 362 U.S. 917, 4 L. Ed. 2d 738 (1960). “A petition for the writ must show merit or that error was probably committed below.” *Id.* (citation omitted). We are not persuaded that defendant’s PWC has shown merit or that error was likely committed by the trial court.

¶ 12 A trial court “may not accept a plea of guilty or no contest without first determining that there is a factual basis for the plea.” N.C. Gen. Stat. § 15A-1022(c) (2021). “This determination may be based upon information including but not limited to” the following five factors: “[a] statement of the facts by the prosecutor”; “[a] written statement of the defendant”; “[a]n examination of the presentence report”; “[s]worn testimony, which may include reliable hearsay”; and “[a] statement of facts by the defense counsel.” *Id.* Here, the trial court addressed defendant personally, ensured that defendant understood the plea agreement into which he had entered,

and heard a statement of the facts proffered by the State, to which defendant made no objection.

¶ 13 As to defendant’s jurisdictional argument, defendant claims that, for the charge of operating a motor vehicle without insurance, in violation of N.C. Gen. Stat. § 20-309, “the pleading failed to allege essential elements of this offense”; namely, that defendant “owned a motor vehicle to which this requirement applied, and that he registered the motor vehicle with the North Carolina Division of Motor Vehicles.”

¶ 14 N.C. Gen. Stat. § 20-309 provides:

[n]o motor vehicle shall be registered in this State unless the owner at the time of registration provides proof of financial responsibility for the operation of such motor vehicle, as provided in this Article. The owner of each motor vehicle registered in this State *shall maintain financial responsibility* continuously throughout the period of registration.

N.C. Gen. Stat. § 20-309(a) (2021) (emphasis added).

¶ 15 Here, the magistrate’s order at issue read:

I, the undersigned, find that the defendant named above has been arrested without a warrant and the defendant’s detention is justified because there is probable cause to believe that on or about the date of offense shown and in the county named above the defendant named above unlawfully and willfully did FAIL TO MAINTAIN FINANCIAL RESPONSIBILITY; LIABILITY INSURANCE[.]

¶ 16 The magistrate's order does not fail to address any of the essential elements for charging defendant with a violation of N.C. Gen. Stat. § 20-309(a). Furthermore, defendant had the opportunity, provided by statute, to object to this pleading, and did not do so. *See* N.C. Gen. Stat. § 15A-922(e) (2021). Lastly, we note that defendant's thirty-day sentence, which the judgment credited in full for time served, has long lapsed.

¶ 17 Having reviewed the Record, PWC, and the State's Motion to Dismiss, together with the briefs on the merits, we exercise our discretion and deny defendant's PWC.

### III. Conclusion

¶ 18 Because defendant's PWC did not show either merit or that error occurred below, we deny defendant's PWC and dismiss the appeal.

DISMISSED.

Judge CARPENTER concurs.

Judge MURPHY concurs in result only.

Report per Rule 30(e).