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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-594

Filed 04 April 2023

Davie County, No. 18CRS51680, 19CRS51194, 19CRS51801 and 21CRS146

STATE OF NORTH CAROLINA,

v.

ROBERT GREY RIDINGS, Defendant.

Appeal by Defendant from judgment entered 7 December 2021 by Judge Mark Klass in Davie County Superior Court. Heard in the Court of Appeals 24 January 2023.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Kimberley A. D'Arruda, for the State.

Hynson Law, PLLC, by Warren D. Hynson, for Defendant-Appellant.

RIGGS, Judge.

Defendant Robert Grey Ridings (Mr. Ridings) appeals from a judgment entered pursuant to a plea agreement by the Honorable Mark Klass in Davie County Superior Court on 7 December 2021. Mr. Ridings argues that the restitution order in his judgment was not supported by competent evidence. After careful review, we allow Mr. Ridings' petition for writ of *certiorari* in our discretion and hold that he has shown

error on the merits of his appeal. Therefore, we vacate and remand for rehearing on the issue of restitution only.

I. Facts & Procedural History

Mr. Ridings was indicted by Davie County grand juries for three separate counts of obtaining property by false pretenses. The indictments occurred on 13 May 2019, 21 October 2019, and 8 June 2020. On 30 August 2021, Mr. Ridings was indicted by a Davie County grand jury for attaining habitual felon status based on prior convictions for felony larceny in 2000, 2008, and 2014.

At a plea and sentencing hearing in front of Judge Klass, Mr. Ridings pleaded no contest to the three counts of obtaining property by false pretenses. Mr. Ridings also pleaded guilty to attaining habitual felon status.

During this hearing, the State recited the following facts into the record. Between 29 and 30 May 2018, a riding lawn mower was stolen from Mr. Hood. The police interviewed several witnesses who indicated they saw Mr. Ridings with the mower during that time frame. One witness, Mr. Campbell, told the police that he purchased a riding mower from Mr. Ridings for \$200. During a police interview, Mr. Ridings admitted to Detective Hemming that he stole a riding lawn mower and sold it for \$200. Additionally, between 6 and 7 November 2019, Mr. and Mrs. Wells found a Toyota Corolla for sale on Craigslist. They contacted the seller, Mr. Ridings, to purchase the vehicle. When they went to Mr. Ridings' residence, the Corolla appeared to have a lot of damage. Mr. Ridings told them that he had a 1997 Ford Thunderbird

STATE V. RIDINGS

Opinion of the Court

for sale at another location and took them to see that car. After seeing the Thunderbird, they paid Mr. Ridings \$1600 for the car. Mr. Ridings told the Wells family that he did not have the title for the vehicle, but he would get it for them. However, Mr. Ridings never conveyed title to them for the car.

At the sentencing hearing, the State did not present witnesses or exhibits to support the restitution worksheet. Additionally, the State did not produce a bill of sale for the Thunderbird.

When Mr. Ridings and his counsel addressed the court in response to the recitation by the State, they focused their comments on the merits of the crime rather than the merits of the restitution worksheet. Mr. Ridings' attorney spoke on his behalf and indicated that Mr. Ridings wanted the court to know there was no false pretense on the sale of the riding mower. Mr. Ridings had his attorney represent to the Court that the transaction occurred at 2:00 a.m. between two people with criminal records. Regarding the car sale, Mr. Ridings maintained, via his counsel, that he had the title to the vehicle. He indicated that he obtained ownership of the vehicle through a death; however, he had issues getting the title from the estate. Mr. Ridings then addressed the court and indicated that while he was guilty of other crimes, he was not guilty of these crimes. However, due to his habitual felon status, he and his attorney believed it was in his best interest to plead no contest to these charges. Neither Mr. Ridings nor his counsel stipulated to the restitution worksheet.

STATE V. RIDINGS

Opinion of the Court

Per the plea agreement, the trial court consolidated the convictions and sentenced Mr. Ridings to a minimum term of imprisonment of 103 months and a maximum term of 136 months, which is within the presumptive range. The court also ordered Mr. Ridings to pay a total of \$1800 in restitution, \$1600 to the Wells, and \$200 to Mr. Campbell.

Counsel for Mr. Ridings did not give notice of appeal at the sentencing hearing but subsequently gave notice of appeal on 4 January 2022. During the 4 January 2022 hearing, Mr. Ridings' counsel stated that he had discussed giving notice of appeal with his client prior to the 7 December 2021 hearing but forgot to address the issue with the Judge. The State did not object to the oral notice of appeal on 4 January 2022.

On 22 October 2022, Mr. Ridings filed a petition for a writ of *certiorari* with his brief in this case.

II. Analysis

A. Petition for writ of *certiorari*

Mr. Ridings concedes that his oral notice of appeal did not comply with the requirements of N.C. R. App. P. 4(a)(1) (2022). Mr. Ridings has requested that this Court grant his writ of *certiorari* pursuant to N.C. Gen. Stat. § 15A-1444 and N.C. R. App. P. 21(a)(1), which allows review of criminal judgments by writ of *certiorari* in appropriate circumstances when the defendant's right to appeal has been waived for failure to take timely action. N.C. Gen. Stat. § 15A-1444 (2021); N.C. R. App. P.

STATE V. RIDINGS

Opinion of the Court

21(a)(1) (2022). Appropriate circumstances may include when a defendant's right to appeal has been lost because of a failure of their trial counsel to give proper notice of appeal. *State v. Gordon*, 228 N.C. App. 335, 337, 745 S.E.2d 361, 363 (2013) (granting a writ of *certiorari* when defendant's trial counsel failed to give oral notice of appeal at trial and then provided a written notice of appeal that did not comply with the requirement of the N.C. R. App. P. 4(b)).

The State argues that the dispositive issue regarding whether this Court can grant the writ of *certiorari* is whether Mr. Ridings would have a right of appeal if he had given timely notice of appeal at the hearing. North Carolina General Statute § 15A-1444(a1) provides a statutory right of appeal to defendants that plead no contest and receive a sentence outside of the presumptive range. N.C. Gen. Stat. § 15A-1444(a1) (2021). The State contends that under N.C. Gen. Stat. § 15A-1444(a1), Mr. Ridings would not have a right of appeal since his sentence was within the presumptive range; therefore, the writ of *certiorari* should be denied. *Id.*

However, even when a defendant does not have a right of appeal, absent specific statutory language limiting this Court's jurisdiction, we maintain jurisdiction and discretionary authority to issue the prerogative writs, including *certiorari*. *State v. Ledbetter*, 371 N.C. 192, 197, 814 S.E.2d 39, 43 (2018). Per North Carolina General Statute §§ 15A-1444(a1) and (e), a defendant who is not entitled to appeal as a matter of right may petition the appellate division for review of their issue by writ of *certiorari*. N.C. Gen. Stat § 15A-1444. Therefore, while Mr. Ridings does not have an

STATE V. RIDINGS

Opinion of the Court

appeal as a matter of right under N.C. Gen. Stat. § 15A-1444, the statute allows a petition for writ of *certiorari*. *Id.*

The State then argues that Rule 21 of the North Carolina Rules of Appellate procedure limits the Court’s ability to grant petitions for writ of *certiorari*. N.C. R. App. P. 21(a)(1). However, the State did not address our Supreme Court’s recent decision in *State v. Killette*, which specifically overruled “*Pimental*, *Harris*, and any other Court of Appeals decision that incorrectly holds or implies” that Rule 21 limits the jurisdiction or authority of the Court of Appeals to issue a writ of *certiorari*. *State v. Killette*, 381 N.C. 686, 690, 873 S.E.2d 317, 319 (2022). “[I]f a valid statute gives the Court of Appeals jurisdiction to issue a writ of *certiorari*, Rule 21 cannot take it away.” *Id.* (quoting *Ledbetter*, 371 N.C. at 196, 814 S.E.2d at 42).

Here, Mr. Ridings pleaded no contest to the three counts of obtaining property by false pretenses. North Carolina General Statute § 15A-1444(e) grants a defendant that has plead no contest to a criminal charge in the superior court the right to petition the appellate division for review by writ of *certiorari*. N.C. Gen. Stat. § 15A-1444(e) (2021). This Court may use its discretion to grant the writ of *certiorari*. We hereby grant the writ of *certiorari* to consider the merits of Mr. Ridings’ claim that the restitution order was not supported by competent evidence.

B. The restitution order was not supported by competent evidence

Mr. Ridings' argument on appeal is that the trial court erred in the restitution order because the restitution worksheet was not supported by competent evidence. We agree.

1. Standard of Review

The issue of whether the restitution order was supported by evidence adduced at trial or at sentencing is reviewed *de novo*. *State v. Wright*, 212 N.C. App. 640, 645, 711 S.E.2d 797, 801 (2011) (citation and internal quotations omitted).

2. Analysis

North Carolina General Statute § 15A-1340.36 dictates that the amount of restitution must be limited to that supported by the record. N.C. Gen. Stat. § 15A-1340.36 (2021). In line with this statute, our Supreme Court and this Court have consistently held that the amount of restitution ordered by the trial court must be supported by competent evidence presented at trial or a sentencing hearing. *State v. Blount*, 209 N.C. App. 340, 347, 703 S.E.2d 921, 925 (2011) (citing *State v. Wilson*, 340 N.C. 720, 726, 459 S.E.2d 192, 196 (1995)). A restitution worksheet, unsupported by testimony, documentation, or stipulation, is insufficient to support an order of restitution. *State v. Mauer*, 202 N.C. App. 546, 552, 688 S.E.2d 774, 777 (2010). "A prosecutor's unsworn statement, standing alone, is insufficient to support an award of restitution." *State v. Swann*, 197 N.C. App. 221, 225, 676 S.E.2d 654, 657-8 (2009). *See also Wilson*, 340 N.C. at 727, 459 S.E.2d at 196.

STATE V. RIDINGS

Opinion of the Court

Furthermore, this Court's rule is clear: A defendant's failure to specifically object to the trial court's entry of an award of restitution does not preclude appellate review. *Mauer*, 202 N.C. App. at 551, 688 S.E.2d at 777-78; *see also Shelton*, 167 N.C. App. at 233, 605 S.E.2d at 233 ("While defendant did not specifically object to the trial court's entry of an award of restitution, this issue is deemed preserved for appellate review under N.C. Gen. Stat. § 15A-1446 (d)(18)."). While it is true that silence, under some circumstances, may be interpreted "as assent, a stipulation's terms must nevertheless be definite and certain in order to afford a basis for judicial decision, and it is essential that they be consented to by the parties or those representing them." *State v. Replogle*, 181 N.C. App. 579, 584, 640 S.E.2d 757, 761 (2007) (citation and internal quotations omitted).

In this case, at the sentencing hearing, the State produced a restitution worksheet and made unsworn statements to support the order of restitution. In the recitation of the facts, the prosecutor made reference to a bill of sale that would support the award of \$1600 in restitution to the Wells family but did not introduce the bill of sale into evidence. Mr. Ridings was not asked by the trial judge to stipulate to the restitution worksheet. When Mr. Ridings and his counsel addressed the court, they did not stipulate to the worksheet. Although Mr. Ridings plead no contest to the charges, he maintained his innocence specific to these transactions. Because the State did not produce evidence at the sentencing hearing to support the restitution

STATE V. RIDINGS

Opinion of the Court

worksheet, the trial court did not have competent evidence to support the restitution order.

Nonetheless, the State argues that Mr. Ridings waived the review of any error in the order of restitution by inviting error. Per North Carolina General Statute § 15A-1443(c), a defendant is not prejudiced by error resulting from his own conduct. N.C. Gen. Stat. § 15A-1443(c) (2021). “[A] defendant who invites error has waived his right to all appellate reviews concerning the invited error, including plain error review.” *State v. Dahlquist*, 231 N.C. App. 575, 584, 753 S.E.2d 355, 361 (2014) (citation omitted).

The States argues that because Mr. Ridings did not dispute the amounts when he addressed the court, he invited error. However, the case law shows that the doctrine of invited error requires conduct or error on the part of the defendant. For example, in *Dahlquist*, the case upon which the State based its invited error argument, the defendant argued that the trial court erroneously sentenced her based on improper information, and this Court held that the defendant invited the error by introducing the evidence herself. *Id.* at 583, 753 S.E.2d at 360; *see also State v. Hope*, 223 N.C. App. 468, 476, 737 S.E.2d 108, 113 (2012) (holding that the defendant invited the failure because he objected to the correct jury instruction and requested an incorrect jury instruction). In contrast, here, the State simply neglected to introduce any evidence to support the restitution worksheet. Mr. Ridings’ silence regarding the restitution worksheet does not constitute invited error.

Turning to the proper remedy, this case is controlled by *Mauer*, where this Court held that when the trial court errs in ordering restitution because the restitution order is not supported by evidence, the proper remedy is to vacate the restitution order and remand for resentencing solely on the issue of restitution. *Mauer*, 202 N.C. App. at 552, 688 S.E.2d at 778; *see also Swann*, 197 N.C. App. at 225, 676 S.E.2d at 657 (vacating restitution award where “victim did not testify and [restitution] worksheet was not supported by any documentation”); *State v. Calvino*, 179 N.C. App. 219, 223 632 S.E.2d 839, 843 (2006) (vacating an award of restitution when the defendant did not stipulate to the amounts and no evidence was introduced at trial or sentencing in support of the calculation). We can find no meaningful way to distinguish the facts of those cases, and we are bound by this Court’s prior ruling in those matters. *In re Civil Penalty*, 324 N.C. 373, 384, 379 S.E.2d 30, 37 (1989).

III. Conclusion

On appeal, the record demonstrates that the only evidence offered to support the restitution order was the unsworn testimony of the prosecutor and Mr. Ridings did not stipulate to the restitution worksheet. Our case law has consistently held that an amount of restitution must be supported by competent evidence presented at trial or sentencing. The unsworn testimony of the prosecutor is insufficient to meet this threshold requirement.

We grant *certiorari* review in our discretion. On the merits, we hold that the trial court erred in the order of restitution. Therefore, we vacate the restitution order

STATE V. RIDINGS

Opinion of the Court

and remand for rehearing on the issue of restitution.

VACATED AND REMAND FOR REHEARING ON RESTITUTION.

Judges GORE and STADING concur.

Report per Rule 30(e).