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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-718

Filed 06 June 2023

Iredell County, Nos. 16CRS051997, 17CRS053659-60, 20CRS050308, 21CRS000803

STATE OF NORTH CAROLINA

v.

KEVIN RAYNARD JOYNER

Appeal by Defendant from judgment entered 10 March 2022 by Judge William A. Wood II, in Iredell County Superior Court. Heard in the Court of Appeals 8 March 2023.

Attorney General Joshua H. Stein, by Assistant Attorney General Lisa B. Finkelstein, for the State-Appellee.

Stephen G. Driggers for Defendant-Appellant.

COLLINS, Judge.

Defendant Kevin Raynard Joyner appeals from judgment entered upon his *Alford* plea to several criminal offenses. Defendant argues that clerical errors on the judgment and commitment form require remand for correction. We agree and we remand the case for the limited purpose of correcting the clerical errors.

I. Background

Between January 2017 and March 2022, Defendant was charged with the following: in 16 CRS 51997 for sexual offense with a child by an adult and indecent liberties with a child; in 17 CRS 53659-60 for possession with intent to manufacture, sell, or deliver cocaine; in 20 CRS 50308 for trafficking in opium or heroin; and in 21 CRS 803 for having attained habitual felon status.

The charges in case numbers 17 CRS 53659-60 and 21 CRS 803 came on for trial on 8 March 2022. At the close of all evidence, Defendant and the State came to an agreement that encompassed the cases on for trial as well as the pending charges against Defendant. The State prepared a Worksheet Prior Record Level for Felony Sentencing showing that Defendant had 15 points and was a Prior Record Level V offender; Defendant stipulated to his prior convictions, points, and record level. Defendant entered an *Alford* plea pursuant to the agreement to the offenses charged in 16 CRS 51997, 17 CRS 53659-60, 20 CRS 50308, and 21 CRS 803. Pursuant to the *Alford* plea, Defendant agreed to the following: the consolidation of all charges into 20 CRS 50308; an active sentence of a minimum of 120 months' and a maximum of 156 months' imprisonment; attend substance abuse and sex offender treatment; pay court costs and lab fees; and pay a \$50,000 fine. The trial court accepted Defendant's plea, sentencing Defendant to 120-156 months' imprisonment. Defendant entered notice of appeal in open court.

II. Discussion

Defendant argues that the case must be remanded for correction of clerical

errors in the judgment and commitment form.

This Court reviews de novo whether there is a discrepancy between an oral ruling and a written judgment form. *See State v. Smith*, 188 N.C. App. 842, 844-45, 656 S.E.2d 695, 696-97 (2008) (conducting de novo review of the record and transcript to discern whether the trial court committed a clerical error).

“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. Lark*, 198 N.C. App. 82, 95, 678 S.E.2d 693, 702 (2009) (quotation marks, brackets, and citation omitted). “Generally, clerical errors include mistakes such as inadvertent checking of boxes on forms . . . or minor discrepancies between oral rulings and written orders[.]” *State v. Lynch*, 254 N.C. App. 334, 339, 803 S.E.2d 190, 193 (2017) (citation omitted). When a clerical error is discovered in the trial court’s judgment form, “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) (quotation marks and citations omitted).

Here, the trial court accepted Defendant’s *Alford* plea and Prior Record Level and sentenced him in open court, consistent with his plea agreement, as follows:

The three substantive offenses for which [Defendant] has entered an *Alford* guilty plea will be consolidated into 20 CRS 50308, Count 1, trafficking in opium with the habitual felon status for which he has also entered a guilty plea as to each of these offenses. That will be a Class C felony. *He*

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is a record level five offender with 15 points, one point being on supervised probation or post-release supervision. However, that does not affect his sentencing. On the Class C Record Level 5, he shall be sentenced to a minimum of 120 months and a maximum of 156 months. That is within the presumptive range. No findings in aggravation or mitigation. It will be an active sentence. He will be given credit for any time spent in custody. He will receive the benefit of any substance abuse treatment available while he is in the Department of Adult Corrections. The court costs and the lab fee and the \$50,000-dollar fine will be a civil judgment. . . .

(emphasis added).

The judgment and commitment form accurately reflects that: Defendant's offenses were consolidated into 20 CRS 50308; the trial court made no findings in aggravation or mitigation; Defendant was sentenced to an active term of 120-154 months' imprisonment; Defendant was ordered to participate in substance abuse treatment and to pay court costs and fees; and Defendant was ordered to pay a \$50,000 fine. However, instead of checking the box that indicates that the "The Court . . . has determined, pursuant to G.S. 15A-1340.14, the prior record points of the defendant to be ____[,]" filling in the blank with 15, and checking the box that indicates that Defendant's prior record level is V, the trial court erroneously checked the box that indicates that "The Court . . . makes no prior record level finding because none is required for Class A felony, violent habitual felon, or drug trafficking offenses." Additionally, instead of checking the box that indicates that "The Court . . . makes no written findings because the term imposed is . . . in the presumptive range[,]" the

trial court erroneously checked the box that indicates that “The Court . . . makes no written findings because the term is imposed is . . . for drug trafficking.” The trial court thus “inadvertently failed to mark the appropriate box[es] . . . and marked the wrong box[es] on the judgment form[.]” *Lark*, 198 N.C. App. at 95, 678 S.E.2d at 703.

III. Conclusion

We remand the case to the trial court for the limited purpose of marking the correct boxes on the judgment and commitment form.

REMANDED FOR CORRECTION OF CLERICAL ERRORS.

Judges GRIFFIN and STADING concur.

Report per Rule 30(e).