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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-906

Filed 19 December 2023

Catawba County, Nos. 19 CRS 53701–02, 20 CRS 1227

STATE OF NORTH CAROLINA

v.

JOSHUA JEZREEL DUNCAN, Defendant.

Appeal by Defendant from order entered 28 March 2022 by Judge J. Thomas Davis in Catawba County Superior Court. Heard in the Court of Appeals 6 September 2023.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Scott T. Stroud, for the State.

Patterson Harkavy LLP, by Christopher A. Brook, for Defendant-Appellant.

CARPENTER, Judge.

Joshua Jezreel Duncan (“Defendant”) appeals from judgment after pleading guilty to one count of possessing a firearm as a felon, three counts of trafficking heroin, one count of possessing heroin, one count of maintaining a dwelling place for controlled substances, and one count of possessing with intent to manufacture, sell, or deliver cocaine. On appeal, Defendant argues the trial court erred in denying his

motion to suppress. After careful review, we deny Defendant's petition for writ of certiorari ("PWC") and dismiss Defendant's appeal for lack of jurisdiction.

I. Factual & Procedural Background

On 16 March 2020, a Catawba County grand jury indicted Defendant for: possessing with the intent to manufacture, sell, or deliver cocaine; possessing a firearm as a felon; trafficking in heroin by possession; trafficking in heroin by transportation; and maintaining a dwelling for controlled substances. On 24 August 2021, Defendant moved to suppress evidence obtained during the execution of a search warrant.

On 28 March 2022, the trial court issued an order (the "Order") denying Defendant's motion to suppress. On 29 March 2022, Defendant pleaded guilty to one count of possessing a firearm as a felon, three counts of trafficking heroin, one count of possessing heroin, one count of maintaining a dwelling place for controlled substances, and one count of possessing with intent to manufacture, sell, or deliver cocaine. Before pleading guilty, Defendant did not give notice of his intention to appeal the Order. On 7 April 2022, Defendant purported to give written notice of appeal from the Order. On 6 March 2023, Defendant filed a PWC.

II. Jurisdiction

Defendant forfeited his right to appeal the Order because Defendant unconditionally pleaded guilty before giving notice of his intention to appeal the Order. *See State v. Reynolds*, 298 N.C. 380, 397, 259 S.E.2d 843, 853 (1979) ("[W]hen

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a defendant intends to appeal from a suppression motion denial . . . he must give notice of his intention to the prosecutor and the court before plea negotiations are finalized or he will waive the appeal of right provisions of the statute.”).

Nevertheless, Defendant has filed a PWC. A PWC is a “prerogative writ” which we may issue to aid our jurisdiction. *See* N.C. Gen. Stat. § 7A-32(c) (2021). But issuing a PWC is an extraordinary measure. *See Cryan v. Nat’l Council of YMCAs of the U.S.*, 384 N.C. 569, 572, 887 S.E.2d 848, 851 (2023). Accordingly, a petitioner must satisfy a two-part test before we will issue a PWC. *Id.* at 572, 887 S.E.2d at 851. “First, a writ of certiorari should issue only if the petitioner can show ‘merit or that error was probably committed below.’” *Id.* at 572, 887 S.E.2d at 851 (quoting *State v. Ricks*, 378 N.C. 737, 741, 862 S.E.2d 835, 839 (2021)). “Second, a writ of certiorari should issue only if there are ‘extraordinary circumstances’ to justify it.” *Id.* at 572–73, 887 S.E.2d at 851 (quoting *Moore v. Moody*, 304 N.C. 719, 720, 285 S.E.2d 811, 812 (1982)).

“We require extraordinary circumstances because a writ of certiorari ‘is not intended as a substitute for a notice of appeal.’” *Id.* at 573, 887 S.E.2d at 851 (quoting *Ricks*, 378 N.C. at 741, 862 S.E.2d at 839). “If courts issued writs of certiorari solely on the showing of some error below, it would ‘render meaningless the rules governing the time and manner of noticing appeals.’” *Id.* at 573, 887 S.E.2d at 851 (quoting *Ricks*, 378 N.C. at 741, 862 S.E.2d at 839). An extraordinary circumstance “generally requires a showing of substantial harm, considerable waste of judicial resources, or

‘wide-reaching issues of justice and liberty at stake.’” *Id.* at 573, 887 S.E.2d at 851 (quoting *Doe v. City of Charlotte*, 273 N.C. App. 10, 23, 848 S.E.2d 1, 11 (2020)).

Here, Defendant argues the trial court erred, but Defendant fails to explain why this case involves an extraordinary circumstance sufficient to excuse his failure to preserve his right to appeal. Notably, Defendant fails to mention the word “extraordinary” in his PWC. Defendant merely concludes that the “interests of justice thus require” us to grant a writ of certiorari. Defendant’s argument falls far short of our extraordinary-circumstance standard, and further, our review of the record reveals no extraordinary circumstances. *See id.* at 573, 887 S.E.2d at 851. Therefore, we deny Defendant’s PWC and dismiss his appeal for lack of jurisdiction. *See Reynolds*, 298 N.C. at 397, 259 S.E.2d at 853.

III. Conclusion

We deny Defendant’s PWC and dismiss this appeal for lack of jurisdiction.

DISMISSED.

Judges TYSON and GORE concur.

Report per Rule 30(e).