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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-609

Filed 2 April 2024

Montgomery County, Nos. 22 CRS 50009-10

STATE OF NORTH CAROLINA

v.

DYLAN RAY LEE SWEAT

Appeal by defendant from judgment entered 9 January 2023 by Judge Patrick Thomas Nadolski in Superior Court, Montgomery County. Heard in the Court of Appeals 21 February 2024.

Attorney General Joshua H. Stein, by Assistant Attorney General Tanisha D. Folks, for the State.

Dysart Willis, by Andrew Hartley Nelson, for defendant-appellant.

ARROWOOD, Judge.

Dylan Ray Lee Sweat (“defendant”) filed a petition for writ of certiorari (“PWC”) for review of the trial court’s judgment pursuant to defendant’s plea agreement with the State. For the following reasons, we dismiss defendant’s appeal but grant the PWC and remand for the limited purpose of correcting a clerical error.

I. Background

On 28 February 2022, a grand jury indicted defendant on two counts of misdemeanor larceny, one count of safecracking, and one count of exploiting a disabled/elderly person. Defendant entered a guilty plea to one count of exploiting a disabled/elderly person and one count of safecracking on 9 January 2023.

As part of the Transcript of Plea, defendant stipulated to pay restitution. Specifically, two boxes were checked in the “Plea Arrangement” section of the transcript. The second box states, “The defendant stipulates to restitution to the party(ies) in the amounts set out on “Restitution Worksheet[.]” Under the “VICTIMS’ RIGHTS ACT (VRA) VICTIMS” section of the Restitution Worksheet, “Fidelity Bank” of Troy, North Carolina is listed.¹ The worksheet lists \$9,189.07 as the restitution amount to be paid to Fidelity Bank. Fidelity Bank was the only party listed on the Restitution Worksheet; no other parties were listed under the worksheet’s “OTHER AGGRIEVED PARTIES (NON-VICTIMS)” section. Defendant and defendant’s counsel signed the Transcript of Plea on the same page as the “plea arrangement” section.

During defendant’s 9 January 2023 sentencing hearing, the trial court conducted a plea colloquy, which included the following exchange between defendant and the trial court:

Trial Court: Are you, in fact, guilty?

¹ “Phyllis Brown, Manager” is listed on the worksheet as the bank’s contact person.

Defendant: Yes. Yes.

. . . .

Trial Court: Do you understand that the courts have approved the practice of plea arrangements and you can discuss your plea arrangement with me without fearing my disapproval?

Defendant: Yes, sir.

Trial Court: Have you agreed to plead guilty as part of a plea arrangement?

Defendant: Yes, sir.

Trial Court: The prosecutor, your lawyer, and you have informed the Court the these are the terms and conditions of your plea: Cases will be consolidated into Class H – into the Class H felony for sentencing. The defendant will receive a suspended sentence with supervised probation on terms deemed appropriate by the presiding judge.

One condition is restitution to the victim. . . . *Defendant stipulates restitution to the parties in the amount set out on the restitution worksheet.* Is the plea arrangement as set forth within this transcript and as I've just described to you correct as being your full plea arrangement? (emphasis added).

Defendant: Yes, sir.

Trial Court: Do you now personally accept this arrangement?

Defendant: Yes, sir.

Following the colloquy, the State provided a factual basis for the plea, which tended to show the following facts:

On 14 December 2021, Phyllis Brown (“Ms. Brown”), a manager at Fidelity Bank in Troy, North Carolina, received a call from a person claiming to be Carol Mills (“Ms. Mills”). At the time of the call, Ms. Mills was a seventy-two-year-old woman who lived in Star, North Carolina.² Ms. Brown told the caller, who had a male voice, that she was unable to help them. In response, the caller stated that they would send defendant—who they claimed was their grandson—to Fidelity Bank to cash a \$500.00 check. Ms. Brown was familiar with Ms. Mills’s account because Fidelity bank had previously frozen the account due to fraudulent activity.

After learning about the phone call from the Troy Police Department, the chief of police in Star (“the chief”) went to Ms. Mills’s home to investigate. Ms. Mills told the chief that she had not recently written a check for \$500.00. When Ms. Mills showed the chief her checkbook, he noticed that the last check in the book and its duplicate were missing. Ms. Mills further told the chief that a “black lock box with her important papers was missing.”

The chief also spoke with Ms. Mills’s grandson, Samuel Mills (“Samuel”), who was staying with Ms. Mills at the time. When asked about defendant, Samuel told the chief that defendant was his cousin and that defendant had been with him the

² Ms. Mills was also dealing with various health issues at the time, including a brain tumor.

day before playing video games at the home.

While the chief was still at Ms. Mills's home, Ms. Brown phoned Ms. Mills and asked her to speak with the chief. Ms. Brown communicated that defendant and Samuel were at Fidelity Bank earlier that day and had attempted to open checking accounts but were denied. Defendant later returned to Fidelity Bank by himself and attempted to cash one of Ms. Mills's checks addressed to him for \$2,000.00. Ms. Brown further communicated that she had called Ms. Mills at the time, and Ms. Mills confirmed she had not written the check.

Later, the chief went to Fidelity Bank and met with Ms. Brown, who provided him with the phone number of the person who previously called Fidelity Bank, claiming to be Ms. Mills. Ms. Brown informed the chief that Fidelity Bank had flagged a series of other suspicious transactions associated with defendant's name as well as video footage of those transactions.

On 2 January 2022, the Star Police Department interviewed Samuel. Samuel stated that defendant knew about the black box and where Ms. Mills kept her checkbook. Samuel also showed them screenshots of conversations between him and defendant, where defendant had asked Samuel for Ms. Mills's email address and passwords to "set up an account in her name" and "gain access to the banking account." Samuel provided defendant's phone number, which matched the number that had called Fidelity Bank requesting to set up an account.

On 6 January 2022, the Star Police Department served a search warrant on

defendant at his mother's home. During the search, police discovered a piece of paper with Ms. Mills's routing and account numbers written on it, a DMV registration receipt made out to Ms. Mills, and a check from Ms. Mills's account written out to defendant.³ According to the State, the "restitution include[d] a number of transactions flagged by Ms. Mills's bank" totaling around \$9,000.00.⁴

During the hearing's judgment and sentencing phase, the trial court stated, "Because restitution is so substantial, the Court will make a special finding that five years of probation is warranted in this matter. So the period of probation will be for five years." In addition to probation, the trial court ordered defendant to serve an active term of thirty days at the local jail, six months of house arrest, and forty-eight hours of community service. Under the "Special Conditions of Probation" section of the trial court's judgment, the trial court further specifies that defendant shall "pay restitution of \$9,189.07 to Fidelity Bank[.]"⁵

Defendant filed a handwritten notice of appeal on 20 January 2023, but the notice failed to designate the proper court. On 25 July 2023, defendant filed a PWC requesting review of the trial court's 9 January 2023 judgment.

II. Discussion

³ Defendant also showed the police Ms. Mills's stolen property, including but not limited to, four rings, the black lock box, vehicle titles, insurance policies, birth certificates, a marriage license, banking information, and other documents associated with Ms. Mills.

⁴ Some of these transactions included "Cash App payments – cash payments."

⁵ The trial court also signed the Restitution Worksheet on 9 January 2023.

Defendant contends that the trial court erred in its judgment by ordering defendant to pay restitution to Fidelity Bank because the stipulation concerning restitution was not definite and certain and that the State's factual basis provided insufficient support for the restitution.

In the alternative, defendant contends that there are clerical errors in the judgment and Restitution Worksheet issued by the trial court. Specifically, defendant contends that the matter should be remanded so that the judgment "can be amended to reflect that [defendant] owes restitution to Ms. Mills rather than Fidelity Bank because Ms. Mills was the victim, not the bank. We agree with defendant that there was a clerical error in the Restitution Worksheet but not the one alleged by defendant. Specifically, the clerical error was that Fidelity Bank should have been listed under the "aggrieved parties" section of the Restitution Worksheet, not the "victims" section.

A. Right to Appeal

Except in limited circumstances, defendants are "not entitled to appellate review as a matter of right" when they enter a guilty plea; however, they "may petition the appellate division for a writ of certiorari." N.C.G.S. § 15A-1444(e) (2023). A "writ of certiorari may be issued in appropriate circumstances by either appellate court to permit review of the judgments and orders of trial tribunals when the right to prosecute an appeal has been lost by failure to take timely action[.]" N.C. R. App. P. 21(a)(1) (2023). "A petition for the writ must show merit or that error was probably

committed below. Certiorari is a discretionary writ, to be issued only for good and sufficient cause shown.” *State v. Rouson*, 226 N.C. App. 562, 563–64 (2013) (citation and internal quotation marks omitted).

In *State v. Monroe*, the defendant argued the trial court erred by accepting his plea agreement “where there was an insufficient factual basis for the plea” and filed a PWC to review the issue. 256 N.C. App. 565, 567 (2017) (per curiam). However, during the plea hearing, when the trial court asked the defendant “if he stipulated, agreed, and admitted to the elements of the offenses, the defendant replied in the affirmative to each charge.” *Id.* at 569 (cleaned up). Further, “at no time during the plea hearing did defendant argue that the factual basis for the entry of judgment against him” was deficient. *Id.* Citing *State v. Kimble*, the *Monroe* Court denied defendant’s PWC and dismissed the appeal because—even assuming the petition was granted—the issue was not properly before the court because defendant failed to raise the issue during the hearing. *Id.* at 568–71; *see also State v. Kimble*, 141 N.C. App. 144, 147 (2000) (deciding not to address an issue on appeal because defendant did not raise it during the plea hearing, leaving it unpreserved under Rule 10 of the North Carolina Rules of Appellate Procedure).

We find *Monroe* and *Kimble* instructive. Here, when asked by the trial court whether defendant understood that he was free to discuss his plea arrangement during the hearing without fear of the trial court’s disapproval, defendant replied, “Yes, sir.” When asked whether his plea arrangement within the signed transcript

was correct, *including* his stipulation as to “restitution to the parties in the amount set out on the restitution worksheet[,]” defendant replied, “Yes, sir.” Lastly, when asked whether he had personally accepted the plea arrangement, defendant again replied, “Yes, sir.” Thus, like *Monroe*, “at no time during the plea hearing did defendant argue” that his stipulation to pay Fidelity Bank restitution was not definite or certain, nor did defendant ever object to the State’s factual basis supporting that restitution.⁶ 256 N.C. App. at 569. Even assuming *arguendo* that we granted defendant’s PWC in full, the issues would not be properly before this Court as a result of defendant’s failure to raise his arguments to the trial court. Accordingly, like in *Monroe*, defendant’s appeal is dismissed because defendant’s PWC failed to show sufficient cause. However, it is appropriate to address the PWC with respect to clerical error.

B. Clerical Error

Although not the one suggested by defendant, we agree that a clerical error was made on the Restitution Worksheet. Specifically, Fidelity Bank should be listed under the “aggrieved party” section of the worksheet rather than the “victims” section.

Section 15A-1021 of the North Carolina General Statutes provides that a “proposed plea arrangement may include a provision for the defendant to make

⁶ In fact, when asked whether defendant would like to be heard on the factual basis, defendant’s counsel state, “Not on facts.”

restitution or reparation to an aggrieved party or parties for the damage or loss caused by the offense or offenses committed by the defendant.” N.C.G.S. § 15A-1021(c) (2023). Generally, “if the defendant is being sentenced for an offense for which the victim is entitled to restitution, the court shall require that the defendant make restitution to the victim for any injuries or damages arising directly and proximately out of the offense committed by the defendant.” N.C.G.S. § 15A-1340.34(b) (2023) (cleaned up); *see also State v. Moore*, 209 N.C. App. 551, 558, *rev’d in part on other grounds*, 365 N.C. 283 (2011) (“[R]estitution is not limited to the particular victim named in the indictment.”). Similarly, our statute that controls conditions of probation provides that “as a condition of probation, a defendant may be required to make restitution or reparation to an aggrieved party or parties who shall be named by the court for the damage or loss caused by the defendant arising out of the offense or offenses committed by the defendant.” N.C.G.S. § 15A-1343(d) (2023). Section 15A-1340.34(a) defines “victim” as “a person directly and proximately harmed as a result of the defendant’s commission of the criminal offense[.]” whereas § 15A-1343(d) describes an “aggrieved party” as including individuals, firms, corporations, associations, and other organizations.

Here, Fidelity Bank—the entity defendant stipulated to pay restitution—fits the description of “aggrieved party” in § 15A-1343(d) and should be listed as such on the Restitution Worksheet. *See* N.C.G.S. § 1A-1, Rule 60(a) (2023) (“Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from

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oversight or omission may be corrected by the judge at any time on his own initiative”); *see also State v. Jarman*, 140 N.C. App. 198, 202 (2000) (defining “clerical error” as one that “results from a minor mistake or inadvertence, especially in writing or copying something on the record, and not from judicial reasoning or determination.” (cleaned up)); *State v. Smith*, 188 N.C. App. 842, 845 (2008) (“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.” (citation and internal quotation marks omitted)). Accordingly, defendant’s PWC is allowed for the limited purpose of correcting the Restitution Worksheet, and in all other respects, is denied.

III. Conclusion

For the foregoing reasons, defendant’s appeal is dismissed, and the PWC is allowed solely to correct the clerical error on the Restitution Worksheet.

APPEAL DISMISSED; CERTIORARI GRANTED FOR LIMITED PURPOSE
OF CORRECTING CLERICAL ERROR.

Judges CARPENTER and THOMPSON concur.

Report per Rule 30(e).