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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-846

Filed 21 May 2024

Craven County, Nos. 18 CRS 53146-47; 18 CRS 53528-29; 21 CRS 50613

STATE OF NORTH CAROLINA

v.

JOSHUA ALLEN BURGESS

Appeal by defendant from judgments entered 12 December 2022 by Judge Clinton D. Rowe in Craven County Superior Court. Heard in the Court of Appeals 2 April 2024.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Christopher R. McLennan, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Nicholas C. Woomer-Deters, for defendant-appellant.

THOMPSON, Judge.

Defendant Joshua Allen Burgess appeals from the trial court's judgment revoking his probation. After careful review, we vacate and remand.

I. Factual Background and Procedural History

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On 26 July 2022, Joshua Allen Burgess (defendant) pled guilty to one count of possession of fentanyl, three counts of possession of drug paraphernalia, three counts of possession of methamphetamine, one count of possession of cocaine, and one count of possession of heroin. The trial court entered a conditional discharge pursuant to N.C. Gen. Stat. § 90-96 and, *inter alia*, placed defendant on twelve months of supervised probation.

On 31 October 2022, a probation violation report was filed in Craven County Superior Court, alleging that defendant had failed to complete community service, failed to report to his scheduled probation appointment, failed to pay court fees, and failed to obtain a substance abuse assessment. The violation report also alleged that, during a warrantless search of defendant's residence on 13 October 2022, "a firearm was located in [defendant's] bedroom[.]" and that "officers [also] located a bag of a brown powdery substance, a bag of white powdery substance, a bag of white crystal[.]like substance, paraphernalia to include baggies and scale, as well as fentanyl patches . . . in [the] kitchen drawer, and [a] small safe[.]like container on [the] kitchen counter" of defendant's residence.

The matter came on for hearing on 12 December 2022 in Craven County Superior Court. At the hearing, defendant admitted that he "failed to complete court-ordered community service," that he "failed to report to his rescheduled office appointment[.]" that he "made no payments toward his court indebtedness[.]" and that "while performing a warrantless search of [defendant]'s residence, a firearm was

located in [defendant]’s bedroom.” However, defendant denied that “during [the] warrantless search [on 13 October 2022] . . . officers located a brown powdery substance, bag of white powdery substance, bag of white crystal-like substance, bag of paraphernalia to include baggies, scale, as well as fentanyl patches in the kitchen drawer, and a small safe-like container [o]n the kitchen counter.”

The trial court consolidated the cases and imposed two judgments against defendant; a 120-day active sentence, a suspended sentence of three to seventeen months, and a twenty-four-month probationary period to begin upon completion of defendant’s active sentence. Defendant did not enter oral notice of appeal at his hearing; however, on 28 December 2022, defendant filed a document *pro se* in Craven County Superior Court, “[r]equesting an appeal of [his] case” From these judgments, defendant appeals.

II. Discussion

A. Appellate jurisdiction

At the outset, we note that, in addition to several other violations of the North Carolina Rules of Appellate Procedure, defendant did not enter timely notice of appeal. “In North Carolina, a defendant’s right to appeal in a criminal proceeding is purely a creation of state statute.” *State v. Romero*, 228 N.C. App. 348, 350, 745 S.E.2d 364, 366 (2013) (citation omitted). “N.C. Gen. Stat. § 15A-1347 provides the only avenues for appeal from a probation order.” *State v. Hoskins*, 242 N.C. App. 168,

170, 775 S.E.2d 15, 17 (2015). N.C. Gen. Stat. § 15A-1347(a) provides in pertinent part that

[w]hen a superior court judge, as a result of a finding of a violation of probation, activates a sentence or imposes special probation, either in the first instance or upon a de novo hearing after appeal from a district court, the defendant may appeal under [N.C. Gen. Stat. §] 7A-27.

N.C. Gen. Stat. § 15A-1347(a) (2023).

N.C. Gen. Stat. § 7A-27, in turn, provides that “appeal lies of right directly to the Court of Appeals . . . [f]rom any final judgment of a superior court” N.C. Gen. Stat. § 7A-27(b)(1). Therefore, an appeal pursuant to N.C. Gen. Stat. § 15A-1347(a) must comply with the North Carolina Rules of Appellate Procedure, which “govern procedure in all appeals from the courts of the trial division to the courts of the appellate division” N.C.R. App. P. 1(b).

As acknowledged in his petition for writ of certiorari, defendant’s “*pro se* notice of appeal suffers from a host of defects[,]” including, failure to “identify this Court as the court to which [defendant] was appealing[,]” failure to “mention one of the two judgments from which [defendant] was appealing[,]” failure to be “signed by [defendant]’s counsel[,]” and providing “no indication the [written] *pro se* notice of appeal was served on the State” pursuant to North Carolina Rules of Appellate Procedure 4(a)(2) and 4(b). We also note that defendant failed to enter oral notice of appeal at his probation hearing, pursuant to Rule 4(a)(1) of the North Carolina Rules of Appellate Procedure. “Compliance with the [appellate] rules . . . is mandatory.”

Dogwood Dev. & Mgmt. Co. v. White Oak Transp. Co., 362 N.C. 191, 194, 657 S.E.2d 361, 362 (2008). However, “rules of practice and procedure are devised to promote the ends of justice, not to defeat them[,]” and “noncompliance with the appellate rules does not, ipso facto, mandate dismissal of an appeal.” *Id.* at 194, 657 S.E.2d at 363 (citation and brackets omitted). Despite defendant’s failure to comply with Rule 4 of the North Carolina Rules of Appellate Procedure, he has filed a petition for writ of certiorari with our Court pursuant to Rule 21 of the North Carolina Rules of Appellate Procedure.

Pursuant to North Carolina Rule of Appellate Procedure 21(a)(1), our Court may issue a writ of certiorari to permit review on the merits in cases where “the right to prosecute an appeal has been lost by failure to take timely action.” *See Anderson v. Hollifield*, 345 N.C. 480, 482, 480 S.E.2d 661, 663 (1997) (acknowledging an appellate court’s authority to “review the merits of an appeal by certiorari even if the party has failed to file notice of appeal in a timely manner”). Similarly, our Court has allowed certiorari in cases where the defendant “request[ed] that this Court review the trial court’s judgment revoking his probation” despite the defendant’s “notice of appeal [being] defective for failure to satisfy multiple procedural requirements for giving notice of appeal as set out in N.C.R. App. P. 4.” *State v. Posey*, 255 N.C. App. 132, 133, 804 S.E.2d 580, 581 (2017); *see also State v. Johnson*, 246 N.C. App. 132, 135, 782 S.E.2d 549, 552 (allowing certiorari where the defendant’s “notice of appeal did not ‘designate the judgment or order from which appeal [wa]s taken’ or ‘the court

to which appeal [wa]s taken[,]” and where there “was also no indication [that] the [State] was served with the notice”).

Certiorari should be allowed when “the ends of justice will be thereby promoted.” *King v. Taylor*, 188 N.C. 450, 451, 124 S.E. 751, 751 (1924). However, “[a] writ of certiorari is an *extraordinary* remedial writ to correct errors of law . . . and its issuance is only appropriate when a defendant has shown merit in his arguments concerning the action to be reviewed or that error was probably committed below” *State v. Diaz-Tomas*, 382 N.C. 640, 651, 888 S.E.2d 368, 377 (2022) (emphasis in original) (citation and internal quotation marks omitted), *cert. denied*, ___ U.S. ___, 143 S. Ct. 2638 (2023). In our discretion, we allow defendant’s petition for writ of certiorari because, as will be discussed at length in the analysis to follow, defendant has “shown merit in his argument[,]” *id.*, regarding the trial court’s order revoking his probation.

B. Standard of review

“Alleged statutory errors are questions of law, and as such, are reviewed *de novo*.” *State v. Lytle*, 287 N.C. App. 657, 658, 883 S.E.2d 655, 656 (2023) (citation omitted).

C. Probation revocation

On appeal, defendant contends that, “the trial court erred when it revoked [defendant]’s probation without making any factual findings to support the revocation” We agree.

N.C. Gen. Stat. § 15A-1345(e) provides that, “[b]efore revoking or extending probation, the court must, unless the probationer waives the hearing, hold a hearing to determine whether to revoke or extend probation *and must make findings to support the decision* and a summary record of the proceedings.” N.C. Gen. Stat. § 15A-1345(e) (emphasis added). Indeed, it is well established that “[t]he minimum requirements of due process in a final probation revocation hearing . . . shall include . . . a written judgment by the judge which shall contain (a) findings of fact as to the evidence relied on, [and] (b) reasons for revoking probation.” *State v. Williamson*, 61 N.C. App. 531, 533–34, 301 S.E.2d 423, 425 (1983) (citation omitted).

Upon our careful review of the judgments at issue in the present case, we conclude that the trial court failed to make *any* written findings of fact to support its revocation of defendant’s probation, despite defendant’s admissions at the hearing that he *had* violated various terms of his probation. Because the trial court failed to follow the statutory mandate of N.C. Gen. Stat. § 15A-1347(e)—by failing to make any written findings to support its order revoking defendant’s probation—the order of the trial court is vacated.

III. Conclusion

We conclude that the trial court erred in revoking defendant’s probation without entering any written findings of fact to support the revocation. For the aforementioned reason, the order of the trial court is vacated, and we remand with

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instructions to make proper findings of fact as to whether revocation of defendant's probation was appropriate in light of his admissions at the probation hearing.

VACATED AND REMANDED.

Judges ZACHARY and HAMPSON concur.

Report per Rule 30(e).