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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-1064

Filed 2 July 2024

Alamance County, Nos. 20 CRS 50257-58

STATE OF NORTH CAROLINA

v.

JOSHUA LEE JAMISON

Appeal by defendant from judgment entered 15 May 2023 by Judge David T. Lambeth, Jr. in Alamance County Superior Court. Heard in the Court of Appeals 17 April 2024.

*Attorney General Joshua H. Stein, by Special Deputy Attorney General M. Lynne Weaver, for the State.*

*Drew Nelson for defendant-appellant.*

THOMPSON, Judge.

Joshua Lee Jamison (defendant) appeals from a civil judgment against him for court costs and attorney's fees. After careful review, defendant's PWC is denied, and his appeal is dismissed for lack of appellate jurisdiction.

**I. Factual Background and Procedural History**

STATE V. JAMISON

*Opinion of the Court*

On 15 January 2020, defendant was arrested and charged with four felony offenses: first-degree statutory sex offense with a minor, first-degree forced sex offense with a minor, indecent liberties with a minor, and child abuse by sexual act.<sup>1</sup> On 2 March 2020, an Alamance County Grand Jury indicted defendant on all charges.

On 15 May 2023, defendant's case came on for hearing during the Criminal Session of Alamance County Superior Court with Judge D. Thomas Lambeth presiding. Pursuant to an arrangement with the State, defendant entered an *Alford* plea<sup>2</sup> to "one count of felony child abuse for a sexual act and one count of indecent liberties with a child[.]" Following the plea transcript colloquy—to ensure that defendant had entered into the guilty plea voluntarily and understandingly—and the State's proffered factual basis, the trial court accepted defendant's guilty plea.

Pursuant to his *Alford* plea, defendant was sentenced to 96 to 176 months of imprisonment and was to receive 1,216 days of credit for time served prior to the hearing. The trial court also entered a civil judgment against defendant for court costs of \$420.50, and attorney's fees in the total amount of \$3,291.25. Additionally, defendant was permanently barred from having contact with the victim and was required to be placed on the sex offender registry.

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<sup>1</sup> These charges appear in two separate files – 20 CR 050257 and 20 CR 050258.

<sup>2</sup> An *Alford* plea is a plea wherein a defendant maintains his innocence but still pleads guilty because he "intelligently concludes that his interests require entry of a guilty plea and the record before the judge contains strong evidence of actual guilt." See *North Carolina v. Alford*, 400 U.S. 25, 37 (1970).

Defendant gave oral notice of appeal in Alamance County Superior Court on 18 May 2023.

## **II. Discussion**

### **A. Petition for Writ of Certiorari**

On 15 December 2023, defendant filed a petition for writ of certiorari (PWC). “A criminal defendant may seek certiorari review when provided for by the Criminal Procedure Act, by other rules of law, or by rule of the appellate division.” *State v. Diaz-Tomas*, 382 N.C. 640, 651, 888 S.E.2d 368, 377 (2022) (internal quotation marks, brackets, and citation omitted). According to Rule 21(a)(1), “[t]he 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 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.” *Diaz-Tomas*, 382 N.C. at 651, 888 S.E.2d at 377. (emphasis omitted) (internal quotation marks and citations omitted). Moreover, our Supreme Court has indicated that “[a] writ of certiorari is not one to which the moving party is entitled as a matter of right[,]” and that the “only exception to the entirely *discretionary* nature of certiorari review is the circumstance of a criminal defendant’s loss of the right to appeal due to some error or act of the court or its officers, and not to any fault or

neglect of the [defendant].” *Id.* (emphasis added) (internal quotation marks, and citations omitted).

In his PWC, defendant acknowledged that his oral notice of appeal from the civil judgment—entered in connection with his criminal judgment—was defective because it was not in writing, which Rule 3(a) of the North Carolina Rules of Appellate Procedure requires for appeals of civil judgments. To support his PWC, defendant contends that this Court should grant his petition because “[defendant] and his trial counsel made a good-faith effort to appeal the judgment issued by the trial court” on 15 May 2023 and “the [S]tate has not been prejudiced by the lack of a written notice of appeal[.]” Moreover, defendant argues that he “raised a meritorious issue in his brief that deserves this Court’s consideration.” We disagree.

“The imposition of court costs is governed by N.C. Gen. Stat. § 7A-304 ([2023]).” *State v. Patterson*, 223 N.C. App. 180, 182, 735 S.E.2d 602, 603 (2012). Pursuant to N.C. Gen. Stat. § 7A-304(a), superior and district courts are required to assess and collect certain costs “[i]n every criminal case in the superior or district court, wherein the defendant is convicted, or enters a plea of guilty . . . .” N.C. Gen. Stat. § 7A-304(a). Despite the fact that the statute is silent as to whether payment of these costs can be enforced as civil judgments, defendant contends that the trial court erred “by immediately converting the costs into a civil judgment” because defendant “had not defaulted on the payment of the court costs at the time the criminal judgment was entered[.]”

To support his argument, defendant cites to N.C. Gen. Stat. § 15A-1365. However, N.C. Gen. Stat. § 15A-1365 is found in Article 84 which governs “fines.” This Court has indicated that “court costs are meant to reflect the financial burden that a defendant’s interaction with the justice system creates. Were it otherwise—were costs designed solely to generate as much revenue as possible—they would be fines, which are a form of punishment.” *State v. Rieger*, 267 N.C. App. 647, 652, 833 S.E.2d 699, 703 (2019). Therefore, N.C. Gen. Stat. § 15A-1365 is inapplicable to the case at bar because it does not apply to the initial assessment and collection of court costs, but instead it applies in situations where the defendant has been ordered to pay a fine. For these reasons, we hold that defendant’s argument lacks merit, and we decline to issue a writ of certiorari.

## **B. Appellate jurisdiction**

“In order to confer jurisdiction on the state’s appellate courts, appellants of lower court orders must comply with the requirements of Rule 3 of the North Carolina Rules of Appellate Procedure.” *Phelps Staffing, LLC v. S.C. Phelps, Inc.*, 217 N.C. App. 403, 410, 720 S.E.2d 785, 790 (2011) (citation omitted). Rule 3 governs how and when to appeal a civil case. N.C.R. App. P. 3 (2023). According to Rule 3, “[a]ny party entitled by law to appeal from a judgment or order of a superior or district court rendered in a civil action . . . may take appeal by filing notice of appeal with the clerk of superior court and serving copies thereof upon all other parties within the time prescribed by subsection (c) of this rule.” N.C.R. App. P. 3(a). Moreover, “[t]he

provisions of Rule 3 are jurisdictional, and failure to follow the requirements thereof requires dismissal of an appeal.” *Phelps Staffing, LLC*, 217 N.C. App. at 410, 720 S.E.2d at 791 (citation omitted).

Here, the trial court entered a civil judgment—in connection with the criminal judgment entered on 15 May 2023—for court costs and attorney’s fees. Subsequently, defendant “appeared in Alamance County Superior Court on 18 May 2023 and gave timely *oral* notice of appeal.” (Emphasis added.) Therefore, defendant failed to comply with Rule 3(a), and this Court has held that such failure should result in the dismissal of defendant’s appeal. *Id.* at 410, 720 S.E.2d at 791.

However, in his brief, defendant contends that “this Court should exercise its authority under Rule 2, reach the substance of this matter, and prevent manifest injustice from occurring in this case.” Although Rule 2 grants this Court discretion in deciding whether to “suspend or vary the requirements or provisions of any of these rules in a case pending before it upon application of a party or upon its own initiative” to “prevent manifest injustice to a party, or to expedite decision in the public interest,” N.C.R. App. P. 2, “Rule 2 must be applied cautiously, and it may only be invoked in *exceptional* circumstances.” *Sprinkle v. Johnson*, 278 N.C. App. 684, 689, 863 S.E.2d 627, 630 (2021) (emphasis added) (citation omitted). Moreover, this Court “should consider whether invoking Rule 2 is appropriate in light of the specific circumstances of individual cases and parties, such as whether substantial rights of an appellant are affected.” *Id.* 278 N.C. App. at 689, 863 S.E.2d at 630–31 (citation omitted).

As we discussed earlier, defendant does not raise a meritorious argument on appeal. Furthermore, there are no “exceptional circumstances,” *id.* at 689, 863 S.E.2d at 630, apparent in defendant’s appeal to warrant the invocation of Rule 2. Therefore, we decline to invoke Rule 2, and defendant’s appeal is dismissed for failure to comply with Rule 3.

### **III. Conclusion**

Based on the discussion above, defendant failed to raise a meritorious argument on appeal. As such, we reject defendant’s contention that his argument warrants the issuance of a writ of certiorari. Moreover, defendant failed to comply with Rule 3 of the North Carolina Rules of Appellate Procedure, and thus, this Court lacks jurisdiction over his appeal. Defendant’s appeal is dismissed.

DISMISSED.

Judges MURPHY and ARROWOOD concur.

Report per Rule 30(e).