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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-290

Filed 3 September 2024

Alamance County, Nos. 21CRS54417-19

STATE OF NORTH CAROLINA

v.

JOHN MAURICE ROBINSON, JR.

Appeal by defendant from judgment entered 3 August 2023 by Judge David T. Lambeth, Jr. in Alamance County Superior Court. Heard in the Court of Appeals 19 August 2024.

Attorney General Joshua H. Stein, by Assistant Attorney General, Alesia Mikhaulauna Balshakova, for the State.

Sarah B. Holladay for the defendant-appellant.

PER CURIAM.

John Maurice Robinson Jr. (“Defendant”) was found guilty by a jury of felony fleeing to elude arrest with a motor vehicle, failure to heed light or siren, reckless driving to endanger, speeding 130 miles per hour in a 55 miles per hour zone, and failing to stop at a duly-erected stop sign. Judgment was entered thereon. We deny

Defendant's petition for writ of *Certiorari* and dismiss Defendant's appeal.

I. Background

Alamance County Sheriff's Deputy Eric Jordan observed a blue Dodge Challenger vehicle ("Challenger") with windows tinted darker than the legal limit on 6 September 2021. Officer Jordan attempted to initiate a traffic stop of the Challenger, but the driver of the Challenger purportedly increased its speed to over 80 miles per hour in a 45 miles per hour zone. Officer Jordan activated his blue lights and siren and began pursuing the Challenger.

During Officer Jordan's pursuit, Defendant's vehicle purportedly reached speeds of 130 miles per hour and drove through multiple intersections without stopping at duly-erected stop signs. At one point, Defendant made a U-turn and Officer Jordan observed the driver of the Challenger was a light-skinned male with his hair in dreadlocks.

Officer Jordan eventually called off the pursuit because another officer, also pursuing the Challenger, had lost control of his vehicle and crashed. Officer Jordan was able to identify Defendant from his DMV picture, which matched his observed appearance of the driver. Officer Jordan proceeded to obtain warrants for Defendant's arrest. On 9 September 2021, Alamance County Sheriff's Sergeant Hinkle took Defendant into custody.

A jury found Defendant guilty on 3 August 2023 of felony fleeing to elude arrest with a motor vehicle, failure to heed light or siren, reckless driving to endanger,

speeding 130 miles per hour in a 55 miles per hour zone, and failing to stop at a duly erected stop sign.

Defendant entered a purported oral notice of appeal on 21 August 2023. Defendant filed a petition for writ of *certiorari* concurrently with his brief to this Court.

II. Jurisdiction

A criminal defendant's right to appeal is purely a creation of statute. *State v. Berryman*, 360 N.C. 209, 214, 624 S.E.2d 350, 354 (2006). The North Carolina Rules of Appellate Procedure allow two options by which a criminal defendant can file an appeal:

(1) giving oral notice of appeal *at trial*, or

(2) *filing notice of appeal with the clerk of superior court* and serving copies thereof upon all adverse parties *within fourteen days after entry of the judgment* or order or within fourteen days after a ruling on a motion for appropriate relief made during the fourteen-day period following entry of the judgment or order.

N.C. R. App. P. 4(a) (emphasis supplied).

“Compliance with the requirements for entry of notice of appeal is jurisdictional.” *State v. Oates*, 366 N.C. 264, 266, 732 S.E.2d 571, 573 (2012) (citation omitted). Oral notice of appeal is permitted, in criminal cases, if given at the time of trial. *See State v. Holanek*, 242 N.C. App. 633, 640, 776 S.E.2d 225, 231 (2015).

A. Defective Notice of Appeal

Defendant provided oral notice of appeal on 21 August 2023, eighteen days after the conclusion of his trial. *Id.* Defendant did not provide written notice of appeal. Defendant's notice of appeal is defective, and this Court lacks jurisdiction unless Defendant's petition for writ of *certiorari* is granted. *See State v. Hope*, 223 N.C. App. 468, 471, 737 S.E.2d 108, 110 (2012).

B. Petition for Writ of *Certiorari*

Defendant, in recognition of his defective notice, filed a petition for writ of *certiorari* on 21 August 2023. A writ of *certiorari* may be issued in "appropriate circumstances" to permit review of an interlocutory order. N.C. R. App. P. 21(a)(1). "*Certiorari* is a discretionary writ, to be issued only for good and sufficient cause shown" *State v. Grundler*, 251 N.C. 177, 189, 111 S.E.2d 1, 9 (1959) (citation omitted), and "[a] petition for [certiorari] must show merit or that error was probably committed below." *Id.* Otherwise, the petition should be denied. *State v. Ricks*, 378 N.C. 737, 741, 862 S.E.2d 835, 838-39 (2021) (citation omitted); *State v. Rouson*, 226 N.C. App. 562, 567, 741 S.E.2d 470, 473 (2013).

N.C. Gen. Stat. § 15A-923(e) (2023) provides "[a] bill of indictment may not be amended." "This statute [] has been construed to mean only that an indictment may not be amended in a way which would substantially alter the charge set forth in the indictment." *State v. Brinson*, 337 N.C. 764, 767, 448 S.E.2d 822, 824 (1994) (emphasis supplied) (citation and quotations omitted).

Here, Defendant argues the trial court erred by allowing the State to amend

the indictment from “speeding in excess of 15 miles per *house* over the legal limit” to “speeding in excess of 15 miles per *hour* over the legal limit,” because the amendment fundamentally changes the meaning of the sentence. A typographical error of this sort in the bill of indictment does not substantially alter the charge in any way. *See State v. Rotenberry*, 54 N.C. App. 504, 510, 284 S.E.2d 197, 201 (1981). Defendant was not “misled as to the nature of the charges against him” nor does he argue prejudice. *Id.*

Our Supreme Court recently held:

[I]n accord with directives from the General Assembly, bills of indictment that contain non-jurisdictional deficiencies will not be quashed or cast aside by reason of any informality when they express the crime charge in a plain, intelligible, and explicit manner, such that defendant has notice sufficient to prepare a defense and to protect against double jeopardy.

State v. Singleton, ___N.C. ___, ___S.Ed. 2d ___ (2024) (citations and quotations omitted).

Defendant’s assertion regarding the State’s typographical error attempts to revive the “superficial practice of vacating convictions and arresting judgment based on non-jurisdictional pleading deficiencies.” *Id.*

The State’s obvious typographical error falls squarely into the category of non-jurisdictional deficiencies our Supreme Court held as inconsequential. *Id.* The Defendant had sufficient notice to prepare a defense and protect against double jeopardy and does not show prejudice.

Defendant has failed to show “merit or that error was probably committed below” or “good and sufficient cause” to support such a writ. *Grundler*, 251 N.C. at 189, 111 S.E.2d at 9 (citation omitted); *Ricks*, 378 N.C. at 741, 862 S.E.2d at 838-39 (citation omitted). In the exercise of our discretion, we deny Defendant’s petition for writ of *certiorari*. In the absence of a timely notice of appeal, Defendant’s appeal is dismissed.

III. Conclusion

Defendant’s petition for writ of *certiorari* is denied. He failed to demonstrate “merit or that error was probably committed below” or “good and sufficient cause” to support such a writ. *Id.* This Court lacks jurisdiction to adjudicate Defendant’s untimely appeal. Defendant’s appeal is dismissed. *It is so ordered.*

DISMISSED.

Panel consisting of Judges Tyson, Zachary, and Hampson.

Report per Rule 30(e).